

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1603

17 December 2021

## RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

**AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA**

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

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

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

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

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**Definition**

1.            In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977,

R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of 15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1967 of 17 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R. 1723 of 30 December 1998, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R. 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 1318 of 30 November 2018, R. 61 of 25 January 2019, R. 842 of 31 May 2019, R. 1343 of 18 October 2019, R. 107 of 7 February 2020 and R.1157 of 30 October 2020.

### Amendment of rule 17 of the Rules

2. Rule 17 of the Rules, is hereby amended—
- (a) by the substitution for subrule (2) of the following subrule:
- “(a) In every case where the claim is not for a debt or liquidated demand the summons shall be **[as near as may be]** in accordance with Form 10 of the First Schedule, to which summons shall be annexed **[a statement] particulars** of the material facts relied upon by the plaintiff in support of **[his] the** claim, which **[statement] particulars** shall *inter alia* comply with rule 18; and

(b) In every case where the claim is for a debt or liquidated demand the summons shall be **[as near as may be]** in accordance with Form 9 of the First Schedule."

(b) by the substitution in subrule (3) for paragraphs (c) and (f) of the following paragraphs respectively:

"(c) After paragraph **[(a)](a)** or **[(b)](b)** has been complied with, the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.

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

### **Amendment of rule 37(6) of Rules**

3. Rule 37(6) is hereby amended by the substitution of paragraph (i) for the following paragraph:

"(i) any agreement regarding the production of proof by way of an affidavit **[in terms of rule 38(2)]** or whether evidence is required to be taken on commission or by way of audiovisual link in terms of rule 38;".

### **Amendment of rule 38 of the Rules**

4. Rule 38 is hereby amended by the addition of the following subrule:

"(9) (a) A court may, on application on notice by any party and where it appears convenient or in the interests of justice, make an order for evidence to be taken through audiovisual link.

(b) A court making an order in terms of paragraph (a) must give such directions which it considers appropriate for the taking and recording of such evidence.

(c) An application in terms of this rule must be accompanied by a draft order setting out the terms of the order sought, including particulars of—

(i) the witness who is required to adduce evidence through audiovisual link;

(ii) the address of the premises from where such evidence will be given; and

(iii) the address of the premises to where the evidence will be transmitted by audiovisual link.

(d) For purposes of this rule "audiovisual link" means facilities that enable both audio and visual communications between a witness and persons in a courtroom, to be transmitted in real-time as they take place."

### Substitution of rule 57 of the Rules

5. The following rule is hereby substituted for Rule 57 of the Rules

#### **“57 [De Lunatico Inquirendo,] Appointment of Curators in Respect of Persons under Disability and Release from Curatorship**

(1) Any person desirous of making an application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and **[as such]** consequently incapable of managing his or her own affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) **[Such]** An application referred to in subrule (1) shall be brought *ex parte* and shall set forth fully-

- (a) the grounds upon which the applicant claims *locus standi* to make such application;
- (b) the grounds upon which the court is alleged to have jurisdiction;
- (c) the patient's age and sex, full particulars of **[his]** the patient's means, and information as to **[his]** the patient's general state of physical health;
- (d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);
- (e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his or her affairs;
- (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

(3) The application shall, as far as possible, be supported by-

- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in **[his]** the affidavit; and
- (b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be **[an alienist]** a psychiatrist or other medical practitioner with appropriate expertise, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon **[his]** the patient's mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his or her affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without a personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in subrule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as **[to it may seem meet] it deems fit** and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

(5) Upon **[his]** appointment of the curator *ad litem* (who shall if practicable be an advocate, or failing such, an attorney), the curator shall without delay interview the patient, and shall also inform **[him]** the patient of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph (b) of subrule (3) **[he]** the curator is satisfied that this would be detrimental to the patient's health. **[He]** The curator shall further make such inquiries as the case appears to require and shall thereafter prepare and file with the registrar, **[his]** a report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In **[his]** the report, the curator **[ad litem]** shall set forth such further facts (if any) as **[he]** the curator has ascertained in regard to the patient's mental condition, means and circumstances and **[he]** shall draw attention to any consideration which in **[his]** the curator's view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the report **[same]**, together with copies of the documents referred to in subrules (2) and (3), to the Master of the **[Supreme Court]** High Court having jurisdiction, for consideration and report to the court.

(7) In **[his]** such report the Master shall, as far as **[he is able]** possible, comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and **[he]** the Master shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to **[him to]** require. The curator *ad litem* shall be furnished with a copy of the said report.

(8) After **[the]** receipt of the report of the Master, the applicant may, on notice to the curator *ad litem* (who shall if **[he thinks]** considered **[fit]** advisable inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his or her affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At **[such]** the hearing, the court may require the attendance of the applicant, the patient, and such other persons as it may think fit, to give **[such]** evidence **[viva voce]** orally or to furnish **[such]** information **[as]** which the court may require.

(10) Upon consideration of the application, the reports of the curator *ad litem* and **[of]** the Master and such further information or evidence (if any) as has been orally adduced **[viva voce]**, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his or her own affairs and may appoint a suitable person as curator to **[his]** the patient's person or property or both, on such terms as **[to it may seem meet] it deems fit**, or it may dismiss the application or generally make such order (including an order that the costs of **[such]**

the proceedings be defrayed from the assets of the patient) as [to it may seem meet] it deems fit.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his or her own affairs.

(12) **[The provisions of subrules (1), (2) and (4) to (10) inclusive shall in so far as the same are applicable thereto, also apply *mutatis mutandis* to any application for the appointment by the court of a curator under the provisions of section 56 of the Mental Health Act, 1973 (Act 18 of 1973), to the property of a person detained as or declared mentally disordered or defective, or detained as a mentally disordered or defective prisoner or as a State President's decision patient and who is incapable of managing his affairs.]**

(13) Save to **[such]** the extent that [as] the court may on application otherwise direct, the provisions of subrules (1) to (11) shall, **[*mutatis mutandis*,]** with the necessary changes required by the context, apply to every application for the appointment of a curator *bonis* to any person on the ground that **[he]** such person is by reason of some disability, mental or physical, incapable of managing his or her own affairs.

(14) Every person who has been declared by a court to be of unsound mind and incapable of managing his or her affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that **[he]** such person is no longer of unsound mind and incapable of managing his or her affairs or for release from **[such]** curatorship, as the case may be, shall give 15 days' notice of such application to such curator and to the Master.

(15) Upon receipt of **[such]** the notice referred to in subrule (14) and after due consideration of the application and **[such]** the information [as is] available, **[to him,]** the Master shall, without delay, report thereon to the court, and shall at the same time **[commenting]** comment upon any aspect of the matter to which, in **[his]** the Master's view, **[its]** the attention of the court should be drawn.

(16) **[The provisions of subrules (14) and (15) hereof shall also apply to any application for release from curatorship by a person who has been discharged under section 53 of the Mental Health Act, 1973 (Act 18 of 1973), from detention in an institution, but in respect of whom a curator *bonis* has been appointed by the court under section 56 of the said Act.]**

(17) Upon the hearing of any application referred to in subrule[s] (14) **[and (16) hereof]** the court may declare the applicant as not being **[no longer]** of unsound mind and as being capable of managing his or her affairs, order **[his]** the applicant's release from **[such]** curatorship, or dismiss the application, or **[*mero motu*]** of its own accord appoint a curator *ad litem* to make **[such]** any inquiries as it considers desirable and to report to it, or call for **[such]** further evidence as it considers desirable and postpone the further hearing of the matter to permit **[of]** the production of such report, affidavit or evidence, as the case may be, or postpone the matter **[*sine die*]** indefinitely and make such order as to costs or otherwise as **[to it may seem meet] it deems fit.**"

**Substitution of Form 9 of the Rules**

6. Form 9 of the First Schedule to the Rules, is hereby substituted for the following Form:

**"FORM 9  
SUMMONS**

(Claim in respect of debt or liquidated demand)

IN THE **[SUPREME]** HIGH COURT OF SOUTH AFRICA  
(..... DIVISION)

Case No.....

In the matter between:

Plaintiff

and

Defendant

To the sheriff or **[his]** deputy:

INFORM A...B..., of (state address)....., (state sex and occupation) ..... (hereinafter called the defendant), that C...D..., of (state address)....., (state sex and occupation) ..... (hereinafter called the plaintiff), hereby institutes action against **[him]** the defendant in which action the plaintiff claims:

(Here set out in concise terms the plaintiff's cause of action).

INFORM the defendant further that if **[he]** the defendant disputes the claim and wishes to defend the action **[he]** the defendant shall within ..... days of the service upon **[him]** the defendant of this summons file with the registrar of this court at ..... (here set out the address of the registrar's office) notice of **[his]** the defendant's intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office box or *poste restante*) referred to in rule 19(3) for the service upon the defendant of all notices and documents in the action.

INFORM the defendant further that if **[he]** the defendant fails to file and serve notice as aforesaid, judgment as claimed may be given against **[him]** the defendant without further notice to **[him]** the defendant.

And immediately thereafter serve on the defendant a copy of this summons and return the **[same]** original summons to the registrar with **[whatsoever]** whatever you have done thereupon.

DATED at ..... on this ..... day of ..... **[19]**  
20.....

.....  
Registrar of the [Supreme] High Court

.....  
Plaintiff's Attorney  
(Address)  
.....  
..... "

**Substitution of Form 10 of the Rules**

7. Form 10 of the First Schedule to the Rules, is hereby substituted for the following Form:

**"FORM 10**

**COMBINED SUMMONS**

IN THE [SUPREME] HIGH COURT OF SOUTH AFRICA

(DIVISION)

Case No.....

In the matter between:

and  
Plaintiff  
Defendant

To the sheriff or [his] deputy:

INFORM A...B..., of (state address)....., (state sex and occupation) ..... (hereinafter called the defendant), that C...D..., of (state address) ..... (state sex and occupation) .....(hereinafter called the plaintiff), hereby institutes action against [him] the defendant in which action the plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the defendant further that if [he] the defendant disputes the claim and wishes to defend the action [he] the defendant shall-

- (i) within ..... days of the service upon [him] the defendant of this summons file with the registrar of this court at .....(set out the address of the registrar) notice of [his] such defendant's intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give an address (not being a post office box or *poste restante*) referred to in rule 19(3) for the service upon the defendant of all notices and documents in the action;



(ii) thereafter, and within 20 days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the plaintiff a plea, exception, notice to strike out, with or without a counter-claim.

INFORM the defendant further that if **[he] the defendant** fails to file and serve notice as aforesaid judgment as claimed may be given against **[him] the defendant** without further notice to **[him] the defendant**, or if, having filed and served such notice, **[he] the defendant** fails to plead, except, make application to strike out or counter-claim, judgment may be given against **[him] the defendant**. And immediately thereafter serve on the defendant a copy of this summons and return the **[same] original summons** to the registrar with **[whatsoever] whatever** you have done thereupon.

DATED at ..... on this ..... day of ..... **[19]**  
**20**.....

.....  
 Registrar of the **[Supreme] High** Court

**ANNEXURE**  
**Particulars of Plaintiff's Claim**

.....  
 .....  
 .....

.....  
 Plaintiff's Attorney

Address of Plaintiff's Attorney

.....  
 .....  
 .....

.....  
 Plaintiff's Advocate"

**Commencement**

8. These rules and forms come into operation on 1 February 2022.

## DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 1603

17 Desember 2021

## WET OP DIE REËLSRAAD VIR GEREESHOWE, 1985 (WET NO. 107 VAN 1985)

WYSIGING VAN DIE REËLS WAARBY DIE VERRIGTINGE VAN DIE  
VERSKILLENDE PROVINSIALE EN PLAASLIKE AFDELINGS VAN DIE HOË  
HOF VAN SUID-AFRIKA GEREËL WORD

Die Reëlsraad vir Gereeshowe het kragtens artikel 6 van die Wet op die Reëlsraad vir Gereeshowe, 1985 (Wet No. 107 van 1985), en met die goedkeuring van die Minister van Justisie en Korrektiewe Dienste, die reëls in die Bylae gemaak.

## BYLAE

## ALGEMENE VERDUIDELIKENDE NOTA:

- [            ]    Woorde of uitdrukkings in vet druk in vierkantige hakies dui op weglatings uit bestaande reëls.
- \_\_\_\_\_    Woorde of uitdrukkings met 'n volstreep daaronder dui op invoegings in bestaande reëls.

**Woordomskrywing**

1.        In hierdie Bylae beteken die "reëls", die Reëls waarby die verrigtinge van die verskillende Provinsiale en Plaaslike Afdelings van die Hoë Hof van Suid-Afrika gereël word soos gepubliseer in Goewermentskennisgewing No. R. 48 van 12 Januarie 1965 en soos gewysig deur Goewermentskennisgewings No's. R. 235 van 18 Februarie 1966, R. 2004 van 15 Desember 1967, R. 3553 van 17 Oktober 1969, R. 2021 van 5 November 1971, R. 1985 van 3 November 1972, R. 480 van 30 Maart 1973, R. 639 van 4 April 1975, R. 1816 van 8 Oktober 1976, R. 1975 van 29 Oktober 1976, R. 2477 van 17 Desember 1976, R. 2365 van 18 November 1977, R. 1546 van 28 Julie 1978, R. 1577 van 20 Julie 1979, R. 1535 van 25 Julie 1980, R. 2527 van 5 Desember 1980, R. 500 van 12 Maart 1982, R. 773 van 23 April 1982, R. 775 van 23 April 1982, R. 1873 van 3 September 1982, R. 2171 van 6 Oktober 1982, R. 645 van 25 Maart 1983, R. 841 van 22

April 1983, R. 1077 van 20 Mei 1983, R. 1996 van 7 September 1984, R. 2094 van 13 September 1985, R. 810 van 2 Mei 1986, R. 2164 van 2 Oktober 1987, R. 2642 van 27 November 1987, R. 1421 van 15 Julie 1988, R. 210 van 10 Februarie 1989, R. 608 van 31 Maart 1989, R. 2628 van 1 Desember 1989, R. 185 van 2 Februarie 1990, R. 1929 van 10 Augustus 1990, R. 1262 van 30 Mei 1991, R. 2410 van 30 September 1991, R. 2845 van 29 November 1991, R. 406 van 7 Februarie 1992, R. 1883 van 3 Julie 1992, R. 109 van 22 Januarie 1993, R. 960 van 28 Mei 1993, R. 974 van 1 Junie 1993, R. 1356 van 30 Julie 1993, R. 1843 van 1 Oktober 1993, R. 2365 van 10 Desember 1993, R. 2529 van 31 Desember 1993, R. 181 van 28 Januarie 1994, R. 411 van 11 Maart 1994, R. 873 van 31 Mei 1996, R. 1063 van 28 Junie 1996, R. 1557 van 20 September 1996, R. 1746 van 25 Oktober 1996, R. 2047 van 13 Desember 1996, R. 417 van 14 Maart 1997, R. 491 van 27 Maart 1997, R. 700 van 16 Mei 1997, R. 798 van 13 Junie 1997, R. 1352 van 10 Oktober 1997, R. 785 van 5 Junie 1998, R. 881 van 26 Junie 1998, R. 1024 van 7 Augustus 1998, R. 1723 van 30 Desember 1998, R. 315 van 12 Maart 1999, R. 568 van 30 April 1999, R. 1084 van 10 September 1999, R. 1299 van 29 Oktober 1999, R. 502 van 19 Mei 2000, R. 849 van 25 Augustus 2000, R. 373 van 30 April 2001, R. 1088 van 26 Oktober 2001, R. 1755 van 5 Desember 2003, R. 229 van 20 Februarie 2004, R. 1343 van 12 Desember 2008, R. 1345 van 12 Desember 2008, R. 516 van 8 Mei 2009, R. 518 van 8 Mei 2009, R. 86 van 12 Februarie 2010, R. 87 van 12 Februarie 2010, R. 88 van 12 Februarie 2010, R. 89 van 12 Februarie 2010, R. 90 van 12 Februarie 2010, R. 500 van 11 Junie 2010, R. 591 van 09 Julie 2010, R. 980 van 19 November 2010, R. 981 van 19 November 2010, R. 464 van 22 Junie 2012, R. 992 van 7 Desember 2012, R. 114 van 15 Februarie 2013, R. 262 van 12 April 2013, R. 471 van 12 Julie 2013, R. 472 van 12 Julie 2013, R. 759 van 11 Oktober 2013, R. 212 van 28 Maart 2014, R. 213 van 28 Maart 2014, R. 214 van 28 Maart 2014, R. 30 van 23 Januarie 2015, R. 31 van 23 Januarie 2015, R. 317 van 17 April 2015, R. 781 van 31 Augustus 2015, R. 3 van 19 Februarie 2016, R. 678 van 3 Junie 2016, R. 1055 van 29 September 2017, R. 1272 van 17 November 2017, R. 1318 van 30 November 2018, R. 61 van 25 Januarie 2019, R. 842 van 31 Mei 2019, R. 1343 van 18 Oktober 2019, R. 107 van 7 Februarie 2020 en R. 1157 van 30 Oktober 2020.

## Wysiging van reël 17 van die Reëls

2. Reël 17 van die Reëls word hierby gewysig—  
(a) deur subreël (2) deur die volgende subreël te vervang:

“(a) In elke saak waarin die eis nie vir skuld of 'n gelikwedeerde eis is nie, moet die dagvaarding [**so na moontlik**] in ooreenstemming met Vorm 10 in die Eerste Bylae wees, aan welke dagvaarding [**'n verklaring**] besonderhede geheg moet word wat die wesenlike feite

bevat waarop die eiser ter staving van **[sy]** die eis steun en wat onder andere aan reël 18 voldoen.

(b) In elke saak waarin die eis vir skuld of 'n gelikwideerde eis is, moet die dagvaarding **[so na moontlik]** in ooreenstemming met Vorm 9 in die Eerste Bylae wees.”.

(b) deur in subreël (3) paragrawe (c) en (f) onderskeidelik deur die volgende paragrawe te vervang:

“(c) Nadat daar aan paragraaf **[(a)]** (a) of **[(b)]** (b) voldoen is, word die dagvaarding deur die griffier onderteken en uitgereik, met die opdrag aan die balju om deur die griffier aan die hof relaas te gee.

(f) Indien die verweerder weier of nalaat om die skriftelike toestemming behoudens paragraaf **[(e)]** (e) voor te lê, mag die hof, op aansoek van die eiser, sodanige toestemming verleen, op sodanige voorwaardes ten opsigte van koste of ander aangeleenthede, soos wat regverdig en toepaslik in die omstandighede geag te wees.”.

### Wysiging van reël 37(6) van Reëls

3. Reël 37(6) word hierby gewysig deur paragraaf (i) deur die volgende paragraaf te vervang:

“(i) enige ooreenkoms betreffende die voorlegging van getuienis by wyse van beëdigde verklaring **[ingevalge reël 38(2)]** of hetsy getuienis nodig is by pleging of by wyse van audiovisuele skakel ingevalge reël 38 geneem moet word;”.

### Wysiging van reël 38 van Reëls

4. Reël 38 word hierby gewysig deur die volgende subreël by te voeg:

“(9) (a) 'n Hof kan, op aansoek by kennisgewing deur enige party en waar dit gerieflik of in die belang van geregtigheid blyk te wees, 'n bevel gee dat getuienis deur audiovisuele skakel afgeneem word.

(b) 'n Hof wat 'n bevel ingevalge paragraaf (a) gee, moet sodanige lasgewings gee wat die hof goedvind vir die afneem en opname van sodanige getuienis.

(c) 'n Aansoek ingevalge hierdie reël moet vergesel gaan van 'n konsepbevel wat die terme van die bevel wat aangevra word, uiteensit, met inbegrip van besonderhede van—

(i) die getuie wat getuienis deur audiovisuele skakel moet aanbied;

- (ii) die adres van die perseel van waar sodanige getuienis gegee sal word;  
en  
 (iii) die adres van die perseel waarheen getuienis per oudiovisuele skakel oorgesend sal word.  
 (d) By die toepassing van hierdie reël, beteken 'oudiovisuele skakel' fasiliteite wat beide oudio asook visuele kommunikasie tussen 'n getuie en persone in 'n hofsaal moontlik maak, wat intyds uitgesaai word soos dit plaasvind."

### Vervanging van reël 57 van Reëls

5. Reël 57 van die Reëls word hierby deur die volgende reël vervang:

#### **"57 [Geregtelike Onderzoek na Geestestoestand,] Aanstelling van Kurators vir Handelingsonbevoegdes en Vrstelling van Kuratele**

(1) Iemand wat 'n bevel by die hof wil aanvra waarby 'n ander persoon (hierna 'die pasiënt' genoem) geestelik verstoord verklaar word en **[derhalwe]** gevolglik onbekwaam om sy belange te behartig, en waarby 'n kurator vir die pasiënt of sy goed aangestel word, moet eers die aanstelling van 'n kurator *ad litem* vir die pasiënt by die hof aanvra.

- (2) **[So] 'n [versoek] Aansoek** geskied *ex parte* en moet volledig uiteensit—
- (a) die gronde waarop die applikant aanspraak maak op *locus standi* om so 'n aansoek te doen;
  - (b) die gronde waarop beweer word dat die hof jurisdiksie het;
  - (c) die pasiënt se ouderdom en geslag, volle besonderhede van **[sy] die pasiënt se** besittings en van **[sy] die pasiënt se** algemene liggaamlike gesondheidstoestand;
  - (d) die verwantskap (as daar is) tussen die pasiënt en die applikant, en die tydskuur en mate van vertroulikheid in hul omgang (as daar is);
  - (e) die feite en omstandighede wat as bewys moet dien dat die pasiënt geestelik verstoord is en nie sy of haar belange kan behartig nie;
  - (f) die name, beroepe en adresse van die onderskeie persone wat vir aanstelling as kurator *ad litem* en daarna as kurator vir die pasiënt se persoon of goed voorgestel word, en 'n verklaring dat hierdie persone genader is en te kenne gegee het dat hulle, indien aangestel, in staat en gewillig sal wees om in die onderskeie hoedanighede te dien.
- (3) Die aansoek moet sover moontlik gesteun word deur—
- (a) 'n beëdigde verklaring van minstens een persoon wat die pasiënt goed ken, met besonderhede oor die pasiënt se geestestoestand waarvan die deponent persoonlik kennis dra. As so iemand aan die pasiënt verwant is of persoonlike belang by die bepalings van 'n aangevraagde bevel het, moet volledige besonderhede van die verwantskap of belang gegee word;
  - (b) beëdigde verklarings van minstens twee mediese praktisyns, een van wie waar doenlik 'n psigiater of ander mediese praktisyn met gepaste

kundigheid moet wees wat die pasiënt kort tevore ondersoek het ten einde oor **[sy]** die pasiënt se geestestoestand verslag te doen. Die verklarings moet al hulle waarnemings insake die pasiënt se geestestoestand bevat, asook hul menings oor die aard, omvang en waarskynlike duur van die geestesverstoring of -gebrek wat hulle gevind het, met hul redes daarvoor, gevolg deur 'n opinie of die pasiënt bekwaam is om sy of haar belange te behartig. Die mediese praktisyns moet sover moontlik nie aan die pasiënt verwant wees nie en geen persoonlike belang by die bepalings van 'n aangevraagde bevel hê nie.

(4) By die aanhoring van die aansoek in subreël (1) bedoel kan die hof die voorgestelde persoon of enige ander geskikte persoon as kurator *ad litem* aanstel, die aansoek van die hand wys of na goeie dinge 'n ander bevel gee. Meer bepaald kan die hof as goeie gronde aangevoer is en vanweë dringendheid of ander besondere omstandighede, enige van die vereistes van hierdie reël oor die hoof sien.

(5) Na **[sy]** aanstelling moet die kurator *ad litem* (wat waar doenlik 'n advokaat of anders 'n prokureur moet wees) onverwyld 'n onderhoud met die pasiënt voer en **[hom]** die pasiënt die doel en aard van die aansoek meedeel tensy **[hy]** die kurator na raadpleging van een van die mediese praktisyns in paragraaf (b) van subreël (3) bedoel, meen dat dit die pasiënt se gesondheid sal benadeel. **[Hy]** Die kurator moet sodanige verdere navrae doen as wat in die saak nodig skyn te wees en 'n verslag aan die hof opstel waarin **[hy]** die kurator ook alle verdere feite wat hy of sy mog vasgestel het aangaande die pasiënt se geestestoestand, **[sy]** middele en omstandighede vermeld, en die aandag vestig op enige oorweging wat **[hy]** die kurator meen die hof sal beïnvloed betreffende die bepalings van die aangevraagde bevel. **[Die verslag moet hy by die griffier indien en terselfdertyd aan die applikant 'n afskrif daarvan verskaf.]**

(6) By ontvangs van die verslag moet die applikant **[dit]** die verslag tesame met afskrifte van die verklarings in subreëls (2) en (3) bedoel, aan die Meester van die Hooggeregshof wat jurisdiksie het, vir oorweging en verslag aan die hof voorlê.

(7) In **[sy]** sodanige verslag moet die Meester **[tot die beste van sy vermoë]** sover moontlik kommentareer oor die pasiënt se middele en algemene omstandighede en die -al of nie-geskiktheid van die persoon wat as kurator van die pasiënt of **[sy]** die pasiënt se goed voorgestel is, en aanbevelings doen oor die verskaffing van sekuriteit en die instuur van rekeninge deur die kurator en die magte wat na sy mening aan hom toevertrou behoort te word. 'n Afskrif van die verslag moet aan die kurator *ad litem* verskaf word.

(8) By ontvangs van die verslag van die Meester kan die applikant die saak op dieselfde stukke vir aanhoring ter rolle plaas om 'n bevel aan te vra waarin verklaar word dat die pasiënt geestelik verstoord is en derhalwe onbekwaam om sy of haar belange te behartig, en waarin die voorgestelde persoon aangestel word as kurator vir die persoon of goed van die pasiënt, of albei. Die applikant moet kennis van die terrolleplasing aan die kurator *ad litem* gee, wat dit **[desverkieënd]** aan die pasiënt kan meedeel, indien dit raadsaam is.

(9) Die hof kan beveel dat die applikant, die pasiënt en andere die aanhoring moet bywoon om mondelinge getuienis af te lê of inligting te verskaf wat die hof mag verlang.

(10) By oorweging van die aansoek, die verslae van die kurator *ad litem* en [van] die Meester en sodanige verdere inligting of getuienis as wat mondelings of andersins voorgelê mog wees, kan die hof gelas dat die aansoek aan die pasiënt beteken word of [hy] die hof kan die pasiënt geestelik verstoord verklaar en onbekwaam om sy of haar eie belange te behartig, en 'n geskikte persoon as kurator vir [hom of sy] die pasiënt of die pasiënt se goed of albei aanstel, met die voorbehoude wat [hy] die hof goevind, of [hy] die hof kan die aansoek van die hand wys of in die algemeen na goe dunk 'n bevel gee (insluitende 'n bevel dat die koste van die verrigtinge uit die bates van die pasiënt betaal word).

(11) Verskillende persone kan, mits iedereen die vereistes van hierdie reël nagekom het, voorgestel en afsonderlik aangestel word as kurator vir die persoon en kurator vir die goed van iemand wat verklaar is geestelik verstoord te wees en onbekwaam om sy of haar eie belange te behartig.

(12) **[Subreëls (1), (2) en (4) tot en met (10) geld, vir sover hulle daarop toegepas kan word, ook *mutatis mutandis* vir 'n aansoek om aanstelling deur die hof van 'n kurator ingevolge artikel 56 van die Wet op Geestesgesondheid, 1973 (Wet 18 van 1973), vir die goed van iemand wat aangehou word as geestelik verstoord of gebrekkig of wat as sodanig verklaar is, of wat aangehou word as 'n geestelik verstoorde of gebrekkige gevangene of as 'n pasiënt wat die beskikking van die Staatspresident afwag en wat onbekwaam is om sy belange te behartig.]**

(13) Behalwe vir sover [as wat] die hof op aansoek anders mag voorskryf, geld subreëls (1) tot (11) [*mutatis mutandis*] met die nodige veranderinge deur die samehang vereis, vir elke aansoek om aanstelling van 'n kurator *bonis* vir iemand op grond daarvan dat [hy] die persoon vanweë 'n gebrek, geestelik of liggaamlik, onbekwaam is om sy of haar eie belange te behartig.

(14) Iemand wat deur die hof geestelik verstoord verklaar is en onbekwaam om sy of haar eie belange te behartig, en vir wie se persoon of goed 'n kurator aangestel is, en wat by die hof aansoek wil doen om 'n verklaring dat [hy] die persoon nie meer geestelik verstoord is en onbekwaam om sy of haar eie belange te behartig nie, of wat vrygestel wil word van kuratele, na gelang van die geval, moet 15 dae kennis van so 'n aansoek aan die kurator en die Meester gee.

(15) By die ontvangs van [so 'n] die kennisgewing in subreël (14) bedoel en na oorweging van die aansoek en [sodanige ander] die beskikbare inligting [as wat hy het], moet die Meester onverwyld verslag daaroor aan die hof doen en moet terselfertyd kommentareer op enige aspek van die saak waarop na [sy] die Meester se mening die hof se aandag gevestig behoort te word.

(16) **[Subreëls (14) en (15) geld ook vir 'n aansoek om vrystelling van kuratele deur iemand wat ingevolge artikel 53 van die Wet op Geestesgesondheid, 1973 (Wet 18 van 1973), uit 'n inrigting waar hy aangehou is, ontslaan is maar ten opsigte van wie 'n kurator *bonis* deur die hof ingevolge artikel 56 van die genoemde Wet aangestel is.]**

(17) Na die aanhoring van 'n aansoek in subreël[s] (14) [en (16)] bedoel, kan die hof die applikant vry van geestesverstoring verklaar en bekwaam om sy of haar belange te behartig en [hom] die applikant van kuratele onthef, of die aansoek van die hand wys, of [mero motu] uit eie beweging 'n kurator *ad litem* aanstel om volgens goedvinde van die hof navrae te doen en daaroor te rapporteer, of [hy] die hof kan sodanige verdere getuienis as wat [hy] die hof wenslik ag, aanvra en die verdere aanhoring van die saak uitstel in afwagting van so 'n verslag, beëdigde verklaring of getuienis, na gelang van die geval, of hy kan die aangeleentheid [sine die] onbepaald uitstel en na goeddunke 'n kostebevel gee.”.

### Vervanging van Vorm 9 van Reëls

6. Vorm 9 van die Eerste Bylae tot die Reëls, word hierby deur die volgende Vorm vervang:

#### “VORM 9

#### Vorm 9

#### Dagvaarding

(Eis ten opsigte van skuld of gelijkwideerde eis)  
IN DIE HOOGEREGSHOF VAN SUID-AFRIKA  
(..... AFDELING)

Saaknommer:

.....

In die saak tussen:

Eiser

En

Verweerder

Aan die balju of adjunk:

STEL A.B., van (meld adres) .....(meld geslag en beroep)..... (hierna die verweerder genoem), in kennis dat C.D., van ..... (vermeld geslag en beroep) .....(hierna die eiser genoem), hierby 'n aksie teen [hom] die verweerder instel in welke aksie die eiser vorder:

(Sit die eiser se skuldoorsaak hier bondig uiteen.)

STEL die verweerder verder in kennis dat indien [hy] die verweerder die eis betwis en die aksie wens te verdedig, [hy] die verweerder binne ..... dae na die betekening aan [hom] die verweerder van hierdie dagvaarding by die griffier van hierdie hof te ..... (meld adres van die griffier) 'n kennisgewing van [sy] die verweerder se voorneme om te verdedig moet indien en 'n afskrif daarvan aan die eiser se prokureur



moet beteken, in welke kennisgewing 'n adres (nie synde 'n posbus of *poste restante* nie) soos in reël 19(3) bedoel vir die betekening aan die verweerder van alle kennisgewings en dokumente in die aksie, aangegee moet word.

STEL die verweerder verder in kennis dat indien **[hy] die verweerder** versuim om 'n kennisgewing in te dien en te beteken soos voormeld, vonnis soos aangevra teen **[hom] die verweerder** gegee kan word sonder verdere kennisgewing aan **[hom] die verweerder**.

En beteken onmiddellik daarna 'n afskrif van hierdie dagvaarding aan die verweerder en lewer die oorspronklike dagvaarding aan die griffier terug met 'n relaas van wat u daaromtrent gedoen het.

GEDATEER te ..... hierdie .....dag van .....**[19] 20**....

.....  
Hooggeregshof

Griffier van die

.....  
Eiser se Prokureur  
(Adres)

.....  
.....  
.....

### Vervanging van Vorm 10 van Reëls

7. Vorm 10 van die Eerste Bylae by die Reëls, word hierby deur die volgende Vorm vervang:

#### Vorm 10 Gekombineerde Dagvaarding

IN DIE HOOGEREGSHOF VAN SUID-AFRIKA  
(AFDELING)

Saak No

.....

In die saak tussen:

Eiser

En

Verweerder

Aan die balju of adjunk:

STEL A.B., van (vermeld adres) ..... (vermeld geslag en beroep) ..... (hierna die verweerder genoem) in kennis dat C.D. van (vermeld adres) ..... (vermeld geslag en beroep) ..... (hierna die eiser genoem), hierby 'n aksie teen **[hom] die verweerder** instel waarin **[hy] die eiser die volgende [regshulp] eis: [wat in die aangehegte besonderhede aangegee word, op die gronde daarin uiteengesit.]**

(Sit die eiser se gronde vir die aksie hier kortliks uiteen).

STEL die verweerder verder in kennis dat indien **[hy] die verweerder** die eis betwis en die aksie wens te verdedig, **[hy] die verweerder**:

- (i) binne ..... dae na die betekening aan **[hom] die verweerder** van hierdie dagvaarding by die griffier van hierdie hof te ..... (meld adres van die griffier) 'n kennisgewing van **[sy] daardie verweerder se** voorneme om te verdedig moet indien en 'n afskrif daarvan aan die eiser se prokureur moet beteken, waarin 'n adres (nie synde 'n posbus of *poste restante* nie) soos in reël 19(3) bedoel vir die betekening aan die verweerder van alle kennisgewings en dokumente in die aksie, aangegee word;
- (ii) daarna, en binne 20 dae na die indiening en betekening van die kennisgewing van voorneme om te verdedig soos voormeld, by die griffier 'n pleit, eksepsie, kennisgewing van mosie vir deurhaling, met of sonder 'n teeneis, moet indien en aan die eiser moet beteken.

STEL die verweerder verder in kennis dat indien **[hy] die verweerder** versuim om 'n kennisgewing soos voormeld in te dien of te beteken, vonnis soos aangevra teen **[hom] die verweerder** gegee kan word sonder verdere kennisgewing aan **[hom] die verweerder**, of indien **[hy] die verweerder** versuim om te pleit, eksepsie op te werp, aansoek om deurhaling te doen of 'n teeneis in te stel nadat so 'n kennisgewing ingedien en beteken is, vonnis ook teen **[hom] die verweerder** gegee kan word. En beteken onmiddellik daarna 'n afskrif van **[hierdie] die oorspronklike** dagvaarding aan die verweerder en lewer die oorspronklike aan die griffier terug met 'n relaas van wat u ook al daaromtrent gedoen het.

GEDATEER te ..... op hierdie .....dag van .....**[19] 20**.....

.....

.....

Griffier van die Hooggeregshof

**AANHANGSEL**

**Besonderhede van eiser se vordering**

.....  
.....  
.....

.....

Eiser se Prokureur

Adres van Eiser se Prokureur

.....

.....

Eiser se Advokaat

**Inwerkingtreding**

8. Hierdie reëls en vorms tree in werking op 1 Februarie 2022.