



LAW SOCIETY
OF SOUTH AFRICA

31 May 2011

Via e-mail: sangovender@justice.gov.za

Rules Board for Courts of Law
P/Bag x668
PRETORIA
0001

Dear Ms Govender

AMENDMENTS TO RULES 4; 6; 17; 19 AND 34 OF THE UNIFORM RULES OF COURT

Your letter dated 7 April 2011 received on 13 April 2011 refers.

Attached hereto comments by the Law Society of South Africa.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Lizette Burger".

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The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE PROPOSED AMENDMENTS TO RULES 4, 6, 17, 19 AND 34
OF THE UNIFORM RULES OF COURT

The Law Society of South Africa (LSSA) has considered the abovementioned draft rules and wishes to comment as follows:

The LSSA supports the increase of the service address distance from 8 kilometer to 15 kilometer and the proposals regarding service by facsimiles and electronic mail.

There have however been the following objections to the proposals regarding service by registered post and electronic mail:

Objection 1: Registered post

- Use of the South African Postal Service is unreliable and inconsistent, as documents are often lost and there is difficulty in obtaining proof of delivery.

Barring service by the sheriff and by hand, there is no way of knowing undoubtedly that the party served has received the document. One retains the proof of service, being the registered slip, and it is possible to track the item on the postal services' website to see whether it has been collected or not.

Notwithstanding the objection, the LSSA supports the amendment and submit that, although the postal service may be unreliable at times, it is no more so than any other developing country and by no means dysfunctional to the point that we should abandon this form of service.

Objection 2: Electronic mail

- Delivery by electronic mail (e-mail) raises problems with proof of delivery and the time of delivery.

We are to rely on Part 2 of Chapter 3 of the Electronic Communications and Transactions Act, which deals with the communication of data messages.

It provides that (unless expressly agreed or proved to the contrary), a data message is regarded as having been received when the complete message enters into the information system designated for that purpose by the addressee and is capable of being retrieved by the addressee. Thus, it is received once it enters the addressee's information system.

In the absence of proof to the contrary, the Act therefore creates certain presumptions as to when a data message has been received.

Although obtaining "proof" that the addressee has received the message may be problematic, it is not a bar to using e-mail as a form of service.

Firstly, an e-mail that is not received or sent "bounces back" to the originator. The sender therefore receives a notice of non-delivery should the email *not* be sent successfully.

Secondly, the data message has to be merely capable of being retrieved; the addressee does not actually have to retrieve it. Furthermore, the addressee does not have to acknowledge receipt of a data message for it to have legal effect.

This however also means that, if a message is blocked by an anti-spam or anti-virus software or ends up in a junk mail folder, one could be bound by the contents of a notice sent by e-mail.

Thirdly, it is possible to request a 'read receipt' on all e-mails when the message is read. However, should the addressee click "no" the sender is still left in the position of having no absolute proof of the addressee having read it.

Having regard to the above, we submit therefore that the proposed provisions in respect of additional modes of service by facsimile or electronic mail could be adequately addressed

by adding them as a supplement to registered post and normal service by hand delivery to the service address.