



3 July 2015

Your ref: Mr Daya

Via e-mail JBalkishun@justice.gov.za

The Secretary
Rules Board for Courts of Law
P O Box 13106
THE TRAMSHED
0126

Dear Sir

PROPOSED AMENDMENT TO UNIFORM RULE 36(8): PROVISION OF A TIME PERIOD WITHIN WHICH A PARTY CAUSING AN EXAMINATION TO BE MADE MUST FURNISH THE REPORT

In our view there is no need to introduce any time limits to Rule 36(8).

Rule 36(8) obliges a party who requests another party to submit to a medical examination or who calls for an inspection or examination of any property to ***“cause the person making the examination to give a full report in writing of the results of his examination and the opinions that he formed as a result thereof on any relevant matter.”***

Rule 36(8) is clearly peremptory and provides that the party concerned ***“shall cause...”***

In the event of a report not being produced within a reasonable period it is already open to the party who submitted him or herself or his or her property for examination or inspection to put the other party on terms to do so and failing compliance to bring an application for failing to comply with the provisions of the rules. The remedy already lies in Rule 30A which specifically caters for this and provides a general remedy for non-compliance with the rules.

It is submitted that it would be unrealistic to try to make a one rule fits all time period for the production of reports. Some, of necessity will take longer than others to finalise. If the party who should have produced the report fails to do so, that party will, in any event, not be entitled to rely on the opinion of the person who conducted the examination.

It is very unlikely, in those circumstances that the party who submitted to examination or inspection would want to rely on the opinion or evidence of the expert who failed to produce the

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report and it is certainly not incumbent on that party to delay the prosecution of the action pending receipt of reports from the other side. Thus, the only person really prejudiced by the failure to produce the report is the party who requested the report in the first place.

Yours faithfully



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