



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

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3 April 2023

Our ref: 13/3/2/6 – April 2023

F Njobe/Z Mbombo

Your ref:

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO RULE 9(3)(d) – SERVICE OF PROCESS, NOTICES AND
OTHER DOCUMENTS OF THE MAGISTRATES' COURTS RULES**

The Rules Board for Courts of Law (Rules Board) intends amending MCR 9(3)(d) concerning service of process at a *domicilium citandi* address, as also informed by recent case law. The proposed amendments are intended to lessen potential injustices and problems which can occur during service.

The proposed amendments are contained in the annexure hereto.

[Annexure A]

As part of its consultative process, the Rules Board hereby invites your comments on the proposed amendments, for submission to the Secretariat by no later than **5 May 2023**.

Submissions can be sent via hand delivery, post, facsimile or email as follows:

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POSTAL ADDRESS: P. O. Box 8409, Pretoria, 0001.

FACSIMILE: (012) 326 8018.

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Office telephone lines via switchboard are temporarily inoperative pending an upgrading process.

Yours sincerely,

LD Neke
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Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985

Justice N Dambuza (Chairperson) | Justice N Mabindla-Boqwana (Vice-Chairperson) | Adv. L Haupt SC | Ms. J Wessels | Adv. M Sishuba | Mr. G Bellairs | Mr. T Thupaatlase | Ms. NS Khanyile | Mr. RR Titus | Mr. VP Maluleke | Adv. S Makoasha | Professor T Broodryk | Adv. P Setati

"9 Service of documents, notices and other process

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

(a) To the said person personally or to such person's duly authorised agent: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, when a building, other than an hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

(c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over such person or, in the absence of a person in authority, to a person apparently not less than 16 years of age and apparently in charge at such person's place of employment;

(d) if the person so to be served has chosen a *domicilium citandi*, by delivering a copy thereof at the *domicilium* so chosen: Provided that, where possible, service at the *domicilium* so chosen shall be effected by delivering a copy of the process to a responsible person apparently not less than 16 years of age: Provided further that the sheriff shall set out in the return of service the details of the manner and circumstances under which **[such]** service was effected;

(e) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)(c) or 86(8)(b) of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;

(g) in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;

(h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;

(i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(j) where the person to be served with any document initiating application proceedings is already represented by an attorney of record such document may be served upon such attorney by the party initiating the proceedings:

Provided that where service has been effected in the manner prescribed by paragraphs (b),(c),(e) or (g), the sheriff shall set out in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process: Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit: Provided furthermore that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally."