



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

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • P.O. Box 13106, The Tramshed, 0126 • Tel (012) 326 8014/ 8045, Fax (012) 326 8018

28 April 2023

Our ref: JB/ASebola/SCC Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO UNIFORM RULE 41A (MEDIATION AS A DISPUTE RESOLUTION MECHANISM)

The Rules Board for Courts of Law (Rules Board) has considered amending Uniform Rule 41A of the Uniform Rules (Mediation as a dispute resolution mechanism).

Arising out of the operation of the rule in practice and out of certain judgments, the Rules Board considered that certain amendments to the rule are necessary and desirable for the efficacious functioning of the objects of the rule and the process of mediation. The Rules Board had regard to *inter alia* the following factors:

- (a) In urgent applications there is no provision for what should occur if a party is unable to comply with the provisions of subrule (2), in particular the notice required, especially in applications launched in terms of the Prevention of Organised Crime Act, 1998 (Act No 121 of 1998); and
- (b) That in considering costs in terms of subrule (9), the court may consider the notice in terms of subrule (2) as well as any other factor which the court may consider relevant, so as to require parties to give serious consideration to mediation.

The Rules Board considered addressing the issue in paragraph (a) above by inserting a proviso to subrule (2) to indicate that “in urgent applications the court or a judge may dispense with compliance with paragraphs (a) and (b).”.

In settling on the proviso the Rules Board had regard to subrule (12) of Uniform Rule 6 (Applications) which regulates urgent applications and provides for the court or a judge to dispense with the forms and service provided for in the rules and considered that it would be useful for purposes of clarity to include in subrule (2) of Uniform Rule 41A, a provision that in urgent applications the court or a judge may dispense with compliance with paragraphs (a) and (b) of Uniform Rule 41A(2).

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 N S Khanyile | Mr R R Titus | Mr V P Maluleke | Adv S Makoasha | Professor T Broodryk | Mr P Setati

In considering the issue in paragraph (b) above, the Rules Board considered that in considering an appropriate costs order under subrule (9), the court may have regard to any other factor which is relevant to the awarding of costs in favour of or against any party.

Draft amended Uniform Rule 41A is attached for consideration.

[ANNEXURE A]

As part of its rule-making and consultation process, the Rules Board invites your comments on the draft amendment proposed to Uniform Rule 41A (ANNEXURE A).

Your comments and inputs should be submitted to the Secretariat of the Rules Board by no later than 30 June 2023 and may be sent via hand delivery, post or email to:

Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume (Andries) Street, Pretoria

Postal: P.O. Box 13106, The Tramshed, 0126

Email: AmSebola@justice.gov.za

The Rules Board looks forward to receiving your inputs (if any) and thanks you for same.

Yours sincerely,



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