



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

2<sup>nd</sup> Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • Fax (012) 326 8018

30 May 2023

Our ref: 13/3/2/6 – May 2023

F Njobe/Z Mbombo

Your ref:

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO FORMS 24 AND 24A OF THE MAGISTRATES' COURTS  
RULES (MCRs) – SUBPOENA AND SUBPOENA *DUCES TECUM***

The Rules Board intends amending forms 24 and 24A of the MCRs. Amongst others, the proposed amendments are aimed at reinforcing the rights of potential witnesses to claim privilege when called to testify in respect of evidence to be given and/or the documents or things to be produced, and to confirm that such privilege maybe waived. The proposed amendments would therefore ensure that any potential injustice or *lacuna* which could occur in the rules/forms is avoided.

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 to forms 24 and 24A, for submission to the Secretariat by no later than **25 July 2023**.

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

**PHYSICAL ADDRESS:** 2<sup>nd</sup> Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

**FACSIMILE:** (012) 326 8018.

**EMAIL:** Zintle Mbombo (ZMbombo@justice.gov.za).

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

Yours sincerely,

**F NJOBE**

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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

**Amendment of Annexure 1 to the Rules**

Annexure 1 to the Rules is hereby amended by the substitution for Form 24  
(\*For use in the District Court) of the following form:

**“No. 24 – Subpoena**

**\*For use in the District Court**

In the Magistrates’ Court for the District of .....

held at ..... Case No. .... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

To: the Sheriff/Deputy Sheriff:

INFORM:

(1) ..... of .....

(2) ..... of .....

(3) ..... of .....

(4) ..... of .....

that each of them is hereby required to appear in person before this court at court number..... on the ..... day of ....., 20....., at..... (time)

**[in the above-mentioned action] and thereafter to remain in attendance until excused by the said court, in order to give evidence [or] and to produce books, papers or documents on behalf of the [.....] above-named plaintiff/defendant** (Where documents are required to be produced, add:) and to bring with each one of them and then produce to the court the deeds, documents, books, writings, tape, electronic, digital or other form of recordings (hereinafter referred to as “documents”) or things specified in the list hereunder[.]; **and that**

**[Payment] payment** of the witness fees for the witnesses as provided and allowed under section 51 bis of the Magistrates' Courts Act, 1944 (Act 32 of 1944), as amended, is hereby tendered by the Plaintiff/Defendant.

**AND FURTHER INFORM** each of the said persons that:

(a) If any person, being duly subpoenaed to give evidence **[or] and** to produce any books, papers or documents in his or her possession or under his or her control, which the party requiring the witness(es)' attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied on oath or by the return of the messenger that such person has been duly subpoenaed and that such person's reasonable expenses, calculated in accordance with the tariff prescribed under section 51 *bis*, have been paid or offered to such person, impose upon the said person a fine not exceeding R300,00, and in default of payment, imprisonment for a period not exceeding three months[.] ;

**[(b) If privilege is claimed in respect of any document or thing, the party that caused the subpoena to be issued shall be informed within five days of receipt of the subpoena of the nature of the privilege claimed; and]**

(b) At the hearing of the matter the said person/s may claim privilege when called to testify in respect of evidence to be given and/or the documents or things to be produced, but such documents and/or things listed herein must be brought to Court and be in such person's possession pending the determination of any claim of privilege.

Such person/s may waive privilege, but if the person intends claiming privilege in respect of the production of any document or thing, the said person must inform the party that caused the subpoena to be issued, as soon as is practicable prior to the hearing date, of the nature of privilege being claimed; and

(c) Such person is entitled to the return of the document or thing after inspection or copying or photographing by the parties.

Dated at ..... this ..... day of ....., 20 .....

.....  
Clerk of the Court

LIST OF DOCUMENTS OR THINGS TO BE PRODUCED

Date	Description	Original or Copy
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.....

.....  
.....  
.....  
(See back.)

[Print on back, paragraphs (a) and (b) of section 51(2) of the Act]"

**"No. 24 – Subpoena**

**\*For use in the Regional Court**

In the Regional Court for the Regional Division of .....

held at ..... Case No. .... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

To: the Sheriff/Deputy Sheriff:

INFORM:

(1) ..... of .....

(2) ..... of .....

(3) ..... of .....

(4) ..... of .....

that each of them is hereby required to appear in person before this court at court number..... on the ..... day of ....., 20....., at..... (time)

**[in the above-mentioned action] and thereafter to remain in attendance until excused by the said court, in order to give evidence [or] and to produce books, papers or documents on behalf of the [.....] above-named plaintiff/defendant** (Where documents are required to be produced, add:) and to bring with each one of them and then produce to the court the deeds, documents, books, writings, tape, electronic, digital or other form of recordings (hereinafter referred to as "documents") or things specified in the list hereunder[.] ; **and that**

**[Payment] payment** of the witness fees for the witnesses as provided and allowed under section 51bis of the Magistrates' Courts Act, 1944 (Act 32 of 1944), as amended, is hereby tendered by the Plaintiff/Defendant.

**AND FURTHER INFORM** each of the said persons that:

(a) If any person, being duly subpoenaed to give evidence **[or] and** to produce any books, papers or documents in his or her possession or under his or her control, which the party requiring the witness(es)' attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied on oath or by the return of the messenger that such person has been duly subpoenaed and that such person's reasonable expenses, calculated in accordance with the tariff prescribed under section 51 *bis*, have been paid or offered to such person, impose upon the said person a fine not exceeding R300,00, and in default of payment, imprisonment for a period not exceeding three months[.] ;

**[(b) If privilege is claimed in respect of any document or thing, the party that caused the subpoena to be issued shall be informed within five days of receipt of the subpoena of the nature of the privilege claimed; and]**

(b) At the hearing of the matter the said person/s may claim privilege when called to testify in respect of evidence to be given and/or the documents or things to be produced, but such documents and/or things listed herein must be brought to Court and be in such person's possession pending the determination of any claim of privilege.

Such person/s may waive privilege, but if the person intends claiming privilege in respect of the production of any document or thing, the said person must inform the party that caused the subpoena to be issued, as soon as is practicable prior to the hearing date, of the nature of privilege being claimed; and

(c) Such person is entitled to the return of the document or thing after inspection or copying or photographing by the parties.

Dated at ..... this ..... day of ....., 20 .....

.....  
Registrar of the Court

LIST OF DOCUMENTS OR THINGS TO BE PRODUCED

Date	Description	Original or Copy
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(See back.)

[Print on back, paragraphs (a) and (b) of section 51(2) of the Act]"

**“No. 24A – Subpoena *duces tecum***

\*For use in the District Court

In the Magistrates’ Court for the District of .....

held at ..... Case No. .... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

To: the Sheriff/Deputy Sheriff:

INFORM:

(1) ..... of .....

(2) ..... of .....

(3) ..... of .....

(4) ..... of .....

(State names, sex, occupation and place of business or residence of each witness)

that each of such persons shall within 10 days of receipt of this subpoena, lodge with the clerk of the said Court (here describe accurately each document to be produced) or inform the clerk of the whereabouts of (here describe a thing to be produced)

(1) .....

(2) .....

(3) .....

(4) .....

unless such person claims privilege in respect of any document of thing

AND INFORM each of the said persons further that:

(a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his or her possession or under his or her control, which the party requiring the witness(es)' attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied on oath or by the return of the messenger that such person has been duly subpoenaed

and that such person's reasonable expenses, calculated in accordance with the tariff prescribed under section 51 *bis*, have been paid or offered to such person, impose upon the said person a fine not exceeding R300,00, and in default of payment, imprisonment for a period not exceeding three months.

(b) Such person/s may waive privilege, but **[If]** if privilege is claimed in respect of any document or thing, the party that caused the subpoena to be issued shall be informed within five days of receipt of the subpoena of the nature of the privilege claimed**[: and]** .

(c) Such person is entitled to the return of the document or thing after inspection or copying or photographing by the parties.

Dated at ..... this ..... day of ....., 20 .....

.....

Clerk of the Court

.....

Plaintiff/Defendant/Attorney”

**“No. 24A – Subpoena *duces tecum***

**\*For use in the Regional Court**

In the Regional Court for the Regional Division of .....

held at ..... Case No. .... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

To: the Sheriff/Deputy Sheriff:

INFORM:

(1) ..... of .....

(2) ..... of .....

(3) ..... of .....

(4) ..... of .....



(State names, sex, occupation and place of business or residence of each witness)  
that each of such persons shall within 10 days of receipt of this subpoena, lodge with the registrar of the said Court (here describe accurately each document to be produced) or inform the registrar of the whereabouts of (here describe a thing to be produced)

- (1) .....
- (2) .....
- (3) .....
- (4) .....

unless such person claims privilege in respect of any document of thing

AND INFORM each of the said persons further that:

(a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his or her possession or under his or her control, which the party requiring the witness(es)' attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied on oath or by the return of the messenger that such person has been duly subpoenaed and that such person's reasonable expenses, calculated in accordance with the tariff prescribed under section 51bis, have been paid or offered to such person, impose upon the said person a fine not exceeding R300,00, and in default of payment, imprisonment for a period not exceeding three months.

(b) Such person/s may waive privilege, but [If] if privilege is claimed in respect of any document or thing, the party that caused the subpoena to be issued shall be informed within five days of receipt of the subpoena of the nature of the privilege claimed[; and] .

(c) Such person is entitled to the return of the document or thing after inspection or copying or photographing by the parties.

Dated at ..... this ..... day of ....., 20 .....

.....  
Registrar of the Court

.....  
Plaintiff/Defendant/Attorney”