



**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

14 March 2022

Our ref: 13/3/2/6 – March 2022 F Njobe/Z Mbombo

Your ref:

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 64 (PROCEDURE FOR
SECURING THE ATTENDANCE OF WITNESSES IN CRIMINAL CASES)**

The Rules Board for Courts of Law (Rules Board) is embarking on a process to review Magistrates' Courts rule 64, and in the process, add some e-development features to embrace modern technology.

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 **29 April 2022**.

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

PHYSICAL ADDRESS: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

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

FACSIMILE: (012) 326 8018.

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

Further enquiries may be directed to (012) 326 8014 / 8045.

Yours sincerely,



Secretary Rules Board for Courts of Law

Chief Director: Funeka Njobe
2nd Floor, Centre Walk East Tower
266 Pretorius Street Pretoria
Tel: (012) 326 8014
Cell: 076 686 3421
Email: FNjobe@justice.gov.za

PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 64 (PROCEDURE FOR SECURING THE ATTENDANCE OF WITNESSES IN CRIMINAL CASES)

GENERAL EXPLANATORY NOTE:

[] Expressions in square brackets in bold indicate omissions from the existing rules.

 Expressions underlined with a solid line indicate insertions into the existing rules.

Amendment of rule 64 of the Rules

“(1) The process for securing the attendance of any person before the court to give evidence in any criminal case or to produce any books, papers or documents, shall be by subpoena prepared by the party desiring the attendance of that person and issued by the registrar or clerk of the court.

[(2) The original subpoena and so many copies thereof as there are witnesses to be subpoenaed, shall be delivered to the sheriff or other person authorised to serve subpoenas in the area where the witness is residing or to the person referred to in section 15(2) or (3) of the Act, as the case may be.]

(2) The subpoena for a witness shall be delivered to the sheriff, a member of the police service or other person authorised to serve subpoenas in terms of section 15(2), (3) or (4) of the Act, as the case may be.

[(3) A copy of the subpoena shall be served upon the witness personally or at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.]

(3) The subpoena shall be served upon the witness—

(a) personally;

(b) at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat;

(c) to his or her electronic mail address; or

(d) to his or her cell phone.

(4) If the person to be served with a subpoena keeps his or her residence or place of business closed and thus prevents the service of the subpoena, it shall be sufficient service to affix **[a copy thereof]** the subpoena to the outer or principal door of such residence or place of business: Provided that the sheriff, a member of the police service or other person authorised to serve subpoenas shall set out in the return of service the details of the manner and circumstances under which such service was effected.

Note to role-players:

The Rules Board would appreciate role-players' inputs on the aspect of "affixing" the subpoena or any other process or documents to the outer / principal door of a residence or place of business as provided for in this sub-rule and other (service) rules [including rule 9(3)]. Does "affix" constitute sufficient service? Should this manner of service continue to be retained or should it be discarded?

[(5) The person serving a witness subpoena shall, if required by the person upon whom it is served, exhibit to him or her the original.]

[(6) The person serving a witness subpoena shall make a return of service by endorsing on the original or on a document attached thereto the manner in which the subpoena was served, and the original shall be returned to the registrar or clerk of the court out of whose office it was issued.]

(6)(a) The person serving a subpoena shall make a return of service specifying the manner in which the subpoena was served and file it in the case docket or with the registrar or clerk of the court out of whose office it was issued.

(b) If the subpoena was served at an electronic mail address, the delivery notice must be attached to the return of service.

(c) If the subpoena was served through a witness' cell phone, a screenshot of such communication must be attached to the return of service.

(7) The subpoena must contain the following information—

(a) the unique reference number and the case number;

(b)(i) the date and time of appearance; and

(ii) the physical address of the court and the number of the court room in which the witness is to testify;

(c) the provisions of section 158 of the Criminal Procedure Act, 1977;

(d) the contact details of the person with whom to arrange for audio-visual testimony if it will be a suitable option for the witness;

(e) the name and contact details of the prosecutor; and

(f) the consequences of not complying with the subpoena; and

(8)(a) In the case of an audio-visual hearing, the link for remote audio visual testimony must be sent to the witness.

(b) If the witness fails to attend the court virtually, the proof of the link and any response to the electronic hearing link, must be submitted to the court.”.