



**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

31 March 2022

Our ref: JB/MCele/13/3/7- URC 36(9) Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO RULE 36(9) OF THE UNIFORM RULES OF COURT

The Rules Board for Courts of Law (Rules Board) has considered amending subrule (9) of Uniform Rule 36 which provides for opinions and reports by expert witnesses.

The proposed amendment arises out of the recommendation made by the Supreme Court of Appeal in **AM and Another v MEC For Health, Western Cape** 2021 (3) SA 337 (SCA), at paragraph [26] of the judgment where the court stated:

“While rule 36(9) was innovative when introduced in 1963, times have moved on and the preparation of expert summaries by lawyers, who often have only a tenuous grasp of the real issues in a case, frequently gives rise to problems of this type. It would be desirable for the Rules Board to reconsider the rule. A useful change would be to require the experts to prepare and deliver their reports in their own words and to include both a statement recognising that the report is furnished for the assistance of the court and a statement of truth.”

The Rules Board has considered that subrule 36(9) should be amended to provide for an expert witness intended to be called by any party to confirm that:

- (a) the report is in such expert's own words;
- (b) the report is for the assistance of the court; and
- (c) the report is a statement of truth.

The Rules Board proposes that the aforesaid draft amendments be couched in a new paragraph (b) of subrule (9).

The Rules Board has also considered that the original text of subrule (9) should be divided into subparagraphs (a)(i) and (a)(ii), and that subparagraph (a)(ii) should be amended to include the phrase “compiled by the expert” to make it clear that a summary of the expert's opinion is to be compiled by the expert, as required by proposed new paragraph (b).

Draft amended Uniform Rule 36(9) is attached for consideration.

[ANNEXURE A]

As part of its rule making and consultative process, the Rules Board invites your comments on the amendments proposed to Uniform Rule 36(9) (ANNEXURE A).

Your comments and submissions should be made to the Secretariat of the Rules Board on or before **31 May 2022** and may be sent via hand delivery, post, facsimile or email to:
Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume Street, Pretoria
Postal: P.O. Box 13106, The Tramshed, 0126
Facsimile: (012) 326-8018
Email: MuCele@justice.gov.za

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

Yours sincerely,



F NJOBE

Secretary: Rules Board for Courts of Law

Email: FNjobe@justice.gov.za

tel: +27 (0)12 3268014 | fx : +27 (0)12 3268018

www.justice.gov.za

ANNEXURE A



RULES BOARD FOR COURTS OF LAW REPUBLIC OF SOUTH AFRICA

GENERAL EXPLANATORY NOTE:

[] Words or expressions in bold type in square brackets indicate omissions from the existing rules.

_____ Words or expressions underlined with a solid line indicate insertions into the existing rules.

36 Inspections, Examinations and Expert Testimony

(1) A party to proceedings, in which damages or compensation in respect of alleged bodily injury is claimed, shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof, to submit to a medical examination.

(2) (a) A party requiring another party to submit to a medical examination shall deliver a notice to such other party that—

- (i) specifies the nature of the examination required;
- (ii) specifies the person or persons who shall conduct the examination;
- (iii) specifies the place where and the date (being not less than 15 days from the date of such notice) and time when it is desired that the examination shall take place; and
- (iv) requires the other party to submit himself or herself for the medical examination at the specified place, date and time.

(b) The notice contemplated in paragraph (a) shall—

- (i) state that the party being examined may have his or her own medical adviser present at the examination; and
- (ii) be accompanied by a remittance in respect of the reasonable expenses to be incurred by the other party in attending the examination.

(c) The expenses referred to in paragraph (b)(ii) shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided that—

- (i) if the party being examined is immobile, the amount to be paid shall include the cost of such person's travelling by motor vehicle and, where required, the reasonable cost of a person attending upon the person to be examined;
- (ii) where the party being examined will actually lose salary, wage or other remuneration during the period of absence from work, such party shall, in addition to the aforementioned expenses, be entitled to receive an amount not exceeding the amount determined by the Minister, in terms of the relevant legislation, for witnesses in civil proceedings, per day in respect of the salary, wage or other remuneration which such

person will actually lose;

(iii) any amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

(3) The person receiving the notice referred to in subrule (2) shall, within five days after the service of the notice, notify the person delivering it, in writing, of the nature and grounds of any objection which such person may have in relation to-

- (a) the nature of the proposed examination;
- (b) the person or persons who shall conduct the examination;
- (c) the place, date or time of the examination;
- (d) the amount of the expenses tendered;

and shall further—

(i) in the case of the objection being to the place, date or time of the examination, furnish an alternative date, time or place, as the case may be; and

(ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

Should the person receiving the notice not deliver an objection within the said period of five days, such person shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice. Should the person giving the notice regard the objection raised by the person receiving it as unfounded in whole or in part the person giving the notice may on notice make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as such person is able to do so to the other party within 10 days, any medical reports, hospital records, x-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

(5) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(5A) If any party claims damages resulting from the death of another person, such party shall undergo a medical examination as prescribed in this rule if this is requested and it is alleged that such party's own state of health is relevant in determining the damages.

(6) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in that party's possession or under that party's control to make it available for inspection or examination in terms of this subrule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than 10 days from the date of receipt of the notice.

(7) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such property thereto if this will materially prejudice such party by reason of the effect thereof upon such property. In the event of any dispute whether the property should be submitted for examination, such dispute shall be referred to a judge on

notice delivered by either party stating that the examination is required and that objection is taken in terms of this subrule. In considering any such dispute the judge may make such order as deemed fit.

(8) Any party causing an examination to be made in terms of subrules (1) and (6) shall—

(a) cause the person making the examination to give a full report in writing, within two months of the date of the examination or within such other period as may be directed by a judge in terms of rule 37(8) or in terms of rule 37A, of the results of the examination and the opinions that such person formed as a result thereof on any relevant matter;

(b) within five days after receipt of such report, inform all other parties in writing of the existence of the report, and upon request immediately furnish any other party with a complete copy thereof; and

(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) (a) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless—

[(a)] (i) where the plaintiff intends to call an expert, the plaintiff shall not more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert; and

[(b)] (ii) in the case of the plaintiff, not more than 90 days after the close of pleadings and in the case of the defendant not more than 120 days after the close of pleadings, such plaintiff or defendant shall have delivered a summary compiled by the expert, of the expert's opinion and the reasons therefor:

Provided that the notice and summary shall in any event be delivered before a first case management conference held in terms of rules 37A(6) and (7) or as directed by a case management judge.

(b) The opinion and reasons therefor, referred to in subparagraph (a)(ii) hereof, or a report compiled by an expert, shall contain a statement by the expert confirming that—

(i) the report is in such expert's own words;

(ii) the report is for the assistance of the court; and

(iii) the report is a statement of truth.

(9A) The parties shall—

(a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case; and

(b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert reports.

(10) (a) No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless such person shall not more than 60 days after the close of pleadings have delivered a notice stating an intention to do so, offering inspection of such plan, diagram, model or photograph and requiring the party receiving notice to admit the same within 10 days after receipt of the

notice.

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof.

[Rule 36 amended by GN R417 of 14 March 1997 (wef 14 April 1997), by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987 (wef 31 December 1987) and substituted by GN R842 of 31 May 2019 (wef 1 July 2019).]