



**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

27 October 2022

Our ref: JB/MCele/SCC

Your ref:

Dear Sir/Madam,

RULES FOR PROCEEDINGS IN TERMS OF CHAPTERS 5 AND 6 OF THE PREVENTION OF ORGANISED CRIME ACT, 1998 (ACT NO. 121 OF 1998)

1. PROPOSED AMENDMENTS TO UNIFORM RULE 6 (APPLICATIONS)

2. PROPOSED UNIFORM RULE 57A (APPOINTMENT AND DISCHARGE OF CURATORS IN TERMS OF POCA, 1998)

In the course of its rule review and making process, the Rules Board for Courts of Law (Rules Board) considered section 62(1) of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) which provides that:

“The Rules Board for Courts of Law referred to in section 1 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), shall, in consultation with the Minister and after consultation with the National Director, with due regard to the purpose of this Act, make rules for–

- (a) the High Court regulating the proceedings contemplated in Chapters 5 and 6;
- (b) the magistrate’s court regulating the proceedings referred to in section 51.”

It has also come to the attention of the Rules Board that problems have been encountered in practice in applications for the restraint, preservation and forfeiture of assets and proceeds of crime when such applications are endeavoured to be made urgently. For this purpose the Rules Board has considered amending Uniform Rule 6 (Applications), in particular subrule (4) thereof.

In addition, the Rules Board has considered that a rule should be crafted to provide for the appointment of curators as contemplated in Chapters 5 and 6 of POCA. For this purpose the Rules Board has considered introducing Uniform Rule 57A which is intended to provide for appointment and discharge of curators in terms of POCA.

As part of its rule-making and consultation process, the Rules Board would appreciate and invites your comments and inputs on the following draft rules:

- (a) Draft amended Uniform Rule 6
- (b) Proposed draft Uniform Rule 57A

[ANNEXURE A]

[ANNEXURE B]


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

Justice N Dambuza (Chairperson) | Adv L Haupt SC | Ms J Wessels | Mr P Hundermark | Adv M Sishuba | Mr G Bellairs |
Mr T Thupaatlase | Ms N S Khanyile | Mr R R Titus | Mr V P Maluleke | Adv S Makoasha | Ms M O Phahlane

Your comments and inputs should be submitted to the Secretariat of the Rules Board on or before 31 December 2022 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: MuCele@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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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.

6 Applications

(1) Every application **[must]** shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion **[must]** shall be addressed to both the registrar and such person, otherwise it **[must]** shall be addressed to the registrar only.

(3) ...

(4) (a) Every application brought *ex parte* shall—

[upon notice to the registrar supported by an affidavit as aforesaid) must be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard. If brought upon notice to the registrar, such notice must set forth the form of order sought, specify the affidavit filed in support thereof, request the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.]

(i) be upon notice to the registrar supported by an affidavit as referred to in subrule (1);

(ii) be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard; and

(iii) set forth the form of order sought, specify the affidavit filed in support thereof, request the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule:

Provided that where an *ex parte* application is brought as an urgent application—

(i) the applicant shall indicate the basis on which the application is deemed to be urgent, including the provisions of any law upon which the applicant relies;

(ii) the application may be brought before a judge in chambers; and

(iii) the provisions of subrule (12) may be applied in so far as is necessary.

(b)(i) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which such person desires to be heard, whereupon the registrar **[must]** shall set such application down for hearing at the same time as the initial application.

(ii) The court hearing the matter may grant or dismiss either or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.

(c)[At the hearing the court may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.]

(i) Every application shall be made via the e-justice system: Provided that any party who does not have access to the e-justice system may use the conventional method.

(ii) Every application shall be heard via the conventional method: Provided that the application may be heard via the e-justice system where all parties consent thereto or where the judge hearing the matter so directs.

(iii) The provisions of this paragraph shall apply *mutatis mutandis* to paragraph (b) of this subrule.

(5)(a) Every application other than one brought *ex parte* **[must]** shall be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereto, **[must]** shall be served upon every party to whom notice thereof is to be given.

(b) In a notice of motion the applicant **[must]** shall—

(i) appoint an address within **[15] 25** kilometres of the office of the registrar and an electronic mail address, if available to the applicant, at either of which addresses the applicant will accept notice and service of all documents in such proceedings;

(ii) state the applicant's postal **[,]** or facsimile **[or electronic mail]** addresses where available; and

(iii) set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and **[must]** shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice:

Provided that—

(aa) for the purposes of this subrule, the days between 21 December and 7 January, both inclusive, shall not be counted in the time allowed for delivery of the notice of intention to oppose or delivery of any affidavit;

(bb) the provisions of subparagraph (aa) shall not apply to applications brought under subrule 6(12) of this rule and applications brought under rule 43.

[Paragraph (b) substituted by GN R1055 of 29 September 2017.]

(c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of an intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the same is to be heard.

(d) Any person opposing the grant of an order sought in the notice of motion **[must]** shall—

(i) within the time stated in the said notice, give applicant notice, in writing, that such person intends to oppose the application, and in such notice appoint an address within **[15]** 25 kilometres of the office of the registrar and an electronic mail address, if available to such person, at either of which addresses such person will accept notice and service of all documents, as well as such person's postal **[,]** or facsimile **[or electronic mail]** addresses where available;

(ii) within **[fifteen]** 15 days of notifying the applicant of intention to oppose the application, deliver such person's answering affidavit, if any, together with any relevant documents; and

(iii) if such person intends to raise any question of law only he or she **[must]** shall deliver notice of such person intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question.

(e) Within 10 days of the service upon the respondent of the affidavit and documents referred to in sub-paragraph (ii) of paragraph (d) of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.

(f)(i) Where no answering affidavit, or notice in terms of sub-paragraph (iii) of paragraph (d), is delivered within the period referred to in sub-paragraph (ii) of paragraph (d) the applicant may within five days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application.

(ii) Where an answering affidavit is delivered the applicant may apply for such allocation within five days of the delivery of a replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in paragraph (e) and where such notice is delivered the applicant may apply for such allocation within five days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the registrar **[must]** shall be given by the applicant or respondent, as the case may be, to the opposite party within five days of notification from the registrar.

(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(h) ...

(6) The court, after hearing an application whether brought *ex parte* or otherwise, may make no order thereon (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(7)(a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event the provisions of rule 10 will apply.

(b) The periods prescribed with regard to applications apply to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.

(8) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

(9) A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise,

[must] shall, before such application is filed with the registrar, be submitted to the Master for consideration and report; and if any person is to be suggested to the court for appointment as curator to property, such suggestion **[must]** shall likewise be submitted to the Master for report. Provided that the provisions of this subrule do not apply to any application under rule 57 except where that rule otherwise provides.

(10) The provisions of subrule (9) further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by testamentary disposition.

(11)(a) (a) Notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.

(b) The provisions of subrule (4)(c)(i) and (ii) shall apply *mutatis mutandis* to this subrule.

(12)(a) (i) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.

(ii) The provisions of subrule (4)(c)(i) and (ii) shall apply *mutatis mutandis* to this subrule.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant **[must]** shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in such person's absence in an urgent application may by notice, set down the matter for reconsideration of the order.

(13) In any application against any Minister, Deputy Minister, Member of an Executive Council, officer or servant of the State, in such capacity, the State or the administration of any province, the respective periods referred to in paragraph (b) of subrule (5), or for the return of a rule *nisi*, **[must]** shall be not less than 15 days after the service of the notice of motion, or the rule *nisi*, as the case may be, unless the court has specially authorized a shorter period.

(14) The provisions of rules 10, 11, 12, 13 and 14 apply to all applications.

(15) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted.

[Rule 6 substituted by GN R3 of 19 February 2016.]



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57A Appointment and discharge of curators in terms of the Prevention of Organised Crime Act, 1998

(1) An application referred to in sections 28, 30(2) and 47 read with section 42 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), for—

- (a) the appointment of a curator *bonis*;
- (b) the variation or rescission of an order appointing a curator *bonis*;
- (c) the variation of the terms of appointment of a curator *bonis*; or
- (d) the discharge of a curator *bonis*;

shall be made in accordance with the provisions of rule 6 of these rules and the forms in the First Schedule to these rules: Provided that an application in terms of paragraph (a) may be combined with an application for a restraint, preservation or realisation of property order.

(2) An application for—

- (a) the appointment of a curator *ad litem*, where such a curator is necessary;
- (b) the variation or rescission of an order appointing a curator *ad litem*;
- (c) the variation of the terms of appointment of a curator *ad litem*; or
- (d) the discharge of a curator *ad litem*;

shall be made in accordance with the provisions of rule 6 and the forms in the First Schedule: Provided that an application in terms of paragraph (a) may be combined with an application for a restraint, preservation or realisation of property order.

(3) An application for any interlocutory order, where such order may be necessary, may be made upon notice in accordance with the provisions of rule (6)(11).

(4) Every application made in terms of subrules (1) and (2) shall *inter alia*—

(a) indicate the section of the Prevention of Organised Crime Act, 1998 in terms of which the application is made;

(b) set forth such particulars as are necessary to enable the court to consider the reasons for the appointment and the functions of a curator *bonis* or, where required, a curator *ad litem*;

(c) set forth the particulars of the person or entity in respect of whom and the property in respect of which a curator is sought to be appointed;

(d) set forth the particulars of the curator and the powers and duties to be ascribed to the curator sought to be appointed;

(e) set forth such particulars as are necessary in support of an application for the discharge of a curator or for the variation or rescission of an order appointing a curator to enable the court to consider the application; and

(f) be accompanied by a draft order prayed.

(5) The powers of a curator *bonis* or a curator *ad litem* applied for in terms of subrule (5) hereof shall be confirmed or may be varied and confirmed by the court as it deems appropriate.

(6) A court hearing an application in terms of this rule may—

(a) grant an order in terms of subrules (1); (2) or (3) hereof; or give directions for better service upon any person or entity or for the joinder in the proceedings of any person or entity; or dismiss or postpone the application or make such order as it deems fit, including any appropriate order for costs;

(b) upon application by any party, permit the filing of further affidavits or the leading of oral evidence.