



NEWSLETTER

SOUTH AFRICAN SHERIFF SOCIETY

DECEMBER 2018

Dear SASS member,

The year has come to an end!! Hooray!! What a remarkable year! Thank you for your loyalty to SASS!!

The holiday period is now upon us and we wish you and your staff a happy festive season and hope you enjoy a well-deserved break.

Before we bid one another Christmas bye-byes, herewith a report of SASS activities for the last quarter of **2018**:

1. Fidelity Fund Certificates and sheriff insurance

We trust that all members managed to renew their Professional Indemnity and third party insurance by now to have Fidelity Fund Certificates issued in time for 2019. As indicated in our email correspondence to members in November, the challenges and shortcomings with the STP third party policy have been addressed with the Board and we trust the necessary will be done to update the policy. We also addressed the subsidization of premiums, to which we were successful in getting the Board to assist the smaller offices once again this year.

We urge members to please insist on receiving a policy document from your insurer and further read and understand your rights and obligations therein, so that when you have a claim you are properly protected.

2. Guidelines – sales in execution of immovable property and the “Reserve Price”

SASS management received numerous enquiries from members on sales in execution that are subjected to a reserve price. In order to provide guidance to members, management organized a workshop on the 6th December 2018 and all issues were discussed and debated.

The guidelines in this regard will follow on a separate newsletter. “This is a not-to-miss document”

3. Government Gazette 42064

This Gazette contains various amendments to the Magistrates Court Rules that members must take note of. It is hereby enclosed for ease of reference.



South African Sheriff Society (<http://www.sassoc.co.za>)

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The most important points are:

Rule 34: Magistrate's Court Rules: This rule was amended to include that taxation of the sheriff's accounts *will be done by the courts where the Warrant was issued*.

Having heard the views of members in this regard, SASS addressed a letter to the Rules Board to object to this amendment and pointed out that the Rule as it is in its current form is *ultra vires*. We are particularly concerned that the delay and non-payment of sheriffs' accounts will escalate.

Item 28 of the Magistrate's Court Tariffs: This was amended to include the writing of a facsimile or electronic mail and to increase the fee from **R10, 00 to R17, 50**.

Item 29 of the Magistrate's Court Tariffs: This was amended and now provides for one fee of **R16.00** for each necessary attendance by telephone.

Item 30 of the Magistrate's Court Tariffs: This was amended to include the sending of an electronic mail to that of a facsimile for the fee of **R5, 50**. The provision for fees for electronic mail is welcomed.

The same fees are introduced for the High Court under **Uniform Rule 68**.

The rules published in this Government Gazette will come into operation on **10 January 2019**.

4. The Rules Board report

A report was received from the SABFS where Thaka Seboka, SASS Vice President and representative for the sheriff profession on the Rules Board, reported on the following matters:

- I. Thaka now has full representative status on the Rules Board as from 2018.
- II. The Rules Board is monitoring the effect of the recent amendments to **Rule 46** and has ruled that the amendment of **Rule 46** does not have retrospective effect; it is for the debtor to escalate the matter. Judgments and progress in litigation matters on **Rule 46** are also being monitored.
- III. The report covers the proposed amendments to Rules 38, 39, 41 and 42 which is now up for comment by the profession.
- iv. Matters of the Small Claims Court that is currently under consideration is the monetary jurisdiction, accommodation of juristic persons and the crafting of Execution Rules.
- v. The Rules Board is also considering the amendment of various fees.

5. Repossession of vehicles for banks

Tracing agents:

We want to inform members of SASS that it has come to our attention that Tracing Agents of banks sometimes engage deputies to fast-track removal of vehicles and by so doing bypassing the office of the sheriff. This is especially found in urban areas where vehicles move through different jurisdictions. Whilst we encourage members to assist banks to recover their assets, at the same time sheriffs must be careful not to involve themselves in acts of corruption and underhand dealings

between the tracers and our deputies; it can result in unlawful conduct and you as sheriff can lose out on fees.

A parallel process is recommended, where the electronic warrant is sent to the deputy as well as the office simultaneously. This will ensure that the warrant is accompanied by written instructions of the attorney.

Procedure followed by Absa bank:

It also came to our attention that Absa sends the Warrant of Delivery to the sheriff for service at the *domicilium* address. 99% of the time, the defendant is no longer domiciled or resident at the address. After service at such an address, the vehicle is then removed by the tracer wherever it is found and the sheriff is not involved with removal of the vehicle.

Members are requested to send examples of such warrants and such instructions, or examples of any other incidents where a Warrant of Delivery is used by banks and their agents to repossess vehicles and the sheriff is bypassed.

6. Meetings conducted and attended

3 August 2018: National management meeting

The newly elected SASS provincial management gathered at City Lodge at OR Tambo and discussed various matters of interest. Planning for the upcoming 2 year period was initiated and provinces had the opportunity to report on matters of interest and those affecting their various provinces.

20 September 2018: Consultative Forum of the **SABFS**

Various matters were raised. This included: Amendment to Section 14(7), sheriff insurance (PI and 3rd party), levies, funding of sheriff organizations, compliance to legal obligations and early notification of non-issue of fidelity fund certificates, SABFS branding, tariff and travelling allowance increases, taxation of sheriff fees and VAT on cash basis.

The Board responded to the compliance to legal obligations matters, raised by SASS, which response will be channeled to members via provinces.

31 October to 2 November 2018: International Conference on access to justice and legal costs

This conference was organized by the South African Law Reform Commission and was attended by Thaka on behalf of SASS. It addressed a number of issues ranging from legal costs and fees in South Africa; whether access to justice is dependent on one's ability to afford legal fees; and Transformation.

The international perspective addressed a comparative study on Kenya, Uganda United Kingdom and Germany. The conference also addressed Socio-Economic factors impeding access to justice including Environmental Justice; the role of the Public Protector in providing access to administrative justice and transformative costing.

The third day of the conference addressed Contingency fees and Absence of Mandatory Fee Agreements; non-litigious legal costs and various categories of Legal Services; State Legal services and pro bono and community legal services.

Small Claims Courts

Legislation relating to the Small Claims Courts is in the process of being reviewed. The review process is addressing issues like the establishment of the National Forum for Commissioners for small claims courts. There is also a consideration to review the jurisdictional limit of the small claims courts from **R15 000, 00 to between R25 000, 00 and R50 000, 00.**

The Rules Board committee dealing with small claims courts is also of the view that Juristic Persons should be accommodated in the small claims courts. Fees and travelling expenses of sheriffs are also being looked at in order to reach an equitable rate.

5 December 2018: A special SASS EXCO meeting was held on this day.

6 December 2018: A SASS workshop on attachment and sales in execution was held on this date.

Banking Forum: The Forum has had 2 meetings in this period where mainly the tariff structure was discussed. Members who need further clarity on the fee structure should contact any member of EXCO for assistance.

7. Provincial Management, Meetings & AGM 2019

We thank all those provincial leaders who were able to conduct their provincial meetings and attend to provincial matters.

All provinces now have WhatsApp groups, please ensure that you participate on the group, valuable information is shared. Contact provincial management for further information.

The National Management has resolved that Provincial meetings will be called early **in 2019**; Dates and invitations will be circulated soon.

We urge all Provinces to set their first quarter meeting with members before the end of March 2019, so that we can start to prepare for our National AGM in Mpumalanga in May / June 2019.

Members of National EXCO would like to attend your meetings, so please forward confirmation of your dates as soon as possible, so that we can plan according

8. SASS calendars

Calendars were posted to all members on **6 December 2018.**

Valuable information appear on the calendars, such as SASS management, contact details, SASS website, SASS banking details, school holidays etc. members are encouraged to hang these calendars in their offices.

This report will be published on the SASS website www.sassoc.co.za

Best regards

Petro Roodt
President
South African Sheriff Society

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)**AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF
THE MAGISTRATES' COURTS OF SOUTH AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

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

Expressions with solid underline represent insertions into the existing rules

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5

of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017 and R. 632 of 22 June 2018.

Amendment of rule 9 of the Rules

2. Rule 9 of the Rules is hereby amended by the substitution for paragraph (g) of subrule (3) of the following paragraph:

“(g) [in the case of a Minister, Deputy Minister or Provincial Premier, in his or her official capacity, the State or provincial administration, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the process has been issued;] in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person’s official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council.”

Amendment of rule 34 of the Rules

3. Rule 34 of the Rules is hereby amended by the substitution for subrule (2) of the following subrule:

“(2)(a) Every account of fees or charges furnished by a sheriff shall contain the following note:

“You may require this account to be taxed and vouched before payment.”

(b) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.”

Amendment of rule 52 of the Rules

4. The following rule is hereby substituted for rule 52 of the Rules:

“52 **Representation and substitution of parties**

- (5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it **[thinks] deems** fit to ensure a just and expeditious decision.
- (6) The court may, on the same procedure, vary its decision in the event of a material change **[taking place] occurring** in the circumstances of either party or a child, or the contribution towards costs proving inadequate.”

Amendment of rule 58 of the Rules

5. Rule 58 of the Rules is hereby amended by the substitution for subrule (5A) of the following subrule:

“(5A) Simultaneously with the delivery by a claimant of particulars of claim, such claimant shall specify an address for service within **[eight] 15** kilometres of the office of the registrar as referred to in rule 6(5)(b).”

Amendment of rule 68 of the Rules

6. Rule 68 of the Rules is hereby amended –

(a) by the substitution for item 12 of the Tariff of the following item:

“12. For the writing of [Each] each necessary letter, facsimile or electronic mail excluding formal letters accompanying process or returns; 17,50”.

(b) by the substitution for item 13 of the Tariff of the following item:

“13. Each necessary attendance by telephone **[(in addition to prescribed trunk charges)][10,00] :16,00.**”.

(c) by the substitution for item 14 of the Tariff of the following item:

“14. Sending and receiving of each necessary facsimile or electronic mail per **[A4 size]** page (in addition to telephone charges); 5,50 .”.

Amendment of rule 70 of the Rules

7. Rule 70 of the Rules is hereby amended by the substitution for Section E of the Tariff of the following item:

Amendment of Part II of Table C of Annexure 2 to the Rules

8. Part II of Table C of Annexure 2 to the Rules is hereby amended –

(a) by the substitution for item 28 of the following item:

"28. For the writing of each necessary letter, facsimile or electronic mail, excluding formal letters accompanying process or returns: [~~10,00~~] 17,50."

(b) by the substitution of item 29 of the following item:

"29. Each necessary attendance by telephone [(in addition to prescribed trunk charges and cellular charges)]: [~~10,00~~] 16,00."

(c) by the substitution of item 30 of the following item:

"30. Sending and receiving of each necessary facsimile[,] or electronic mail per [A4 size] page (in addition to telephone charges): 5,50."

9. APPENDIX A**CORRECTION NOTICE**

The Rules Board for Courts of Law, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister of Justice and Correctional Services, hereby removes Appendix A (Tariff of allowances payable to witnesses in civil cases) from the Schedule to Government Notice No. R. 740 of 23 August 2010.

Commencement

10. These rules shall come into operation on 10 January 2019