

RULES BOARD FOR COURTS OF LAW

**PRESENTATION TO SELECT COMMITTEE ON JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

1. THE RULES BOARD FOR COURTS OF LAW

The Rules Board for Courts of Law ("the Board") was established by the Rules Board for Courts of Law Act 107 of 1985 ("the Act") to review the rules of court and to make, amend or repeal rules, subject to the approval of the Minister of Justice.

Section 9 of the Act provides for the establishment of a secretariat to the Board which is to perform the work incidental to the performance by the Board of its functions. The secretariat provides secretarial and administrative support to the Board. The secretariat also conducts research into the rules of court.

The Rules Board secretariat is located in the Branch: Legislative and Constitutional Development.

The members of the Rules Board are:

The Hon Madam Justice BE Nkabinde (Chairperson); The Hon Mr Justice CM Somyalo (Vice-Chairperson); The Hon Mr Justice BM Griesel; Mr N Makabanyane; Adv M Wallis; Mr C Sardiwalla; Mr T Jooste; Dr C van Heerden; Mr S Jiyane; Ms M Monama; Prof C Loots; Adv J Moses (Alt); Adv K Green (Alt).

A. 2004/05

2. RULES APPROVED DURING 2004/ 2005

The Rules Board approved the following rules during 2004/2005.

2.1 Draft amendments of the Supreme Court of Appeal Rules, the High Court Rules and the Magistrates' Courts Rules to provide for the new appeal procedure

The Supreme Court of Appeal Rules, the High Court Rules and the Magistrates' Courts Rules had to be amended to accommodate the new appeal procedure introduced by the Criminal Procedure Amendment Act, 2003 (Act 43 of 2003)(the Amendment Act), which came into operation on 1 January 2004. The draft rules were approved by the Board on 8 October 2004 and have been submitted to the Minister for approval.

2.2 Draft rules in terms of the Promotion of Access to Information Act 2 of 2000

The Board approved the Rules at a meeting held on 8 April 2005 and these have been sent to the Minister for approval.

2.3 Draft rules in terms of the Promotion of Administrative Justice Act 3 of 2000

The Board approved the Rules on 19 August 2005 and these have been sent to the Minister for approval.

2.4 Draft amendments of the High Court Rules and the Magistrates' Courts Rules to provide for the appointment of more than one sheriff for an area in terms of section 3(2)(b) of the Sheriffs Act, 1986

Section 3(2)(b) of the Sheriffs Act of 1986 was amended in 1998 to provide that the Minister could appoint more than one sheriff for an area after consultation with the Board of Sheriffs. It consequently became necessary that certain amendments be made to the Magistrate and High Court Rules. The rules were approved by the Board on 5 August 2005 and sent to the Minister for approval.

2.5 Amendment of rule 46 of the High Court Rules

The Board approved the amendment of rule 46(3) of the High Court Rules to provide that notice in terms of rule 46(3) could be served by registered letter. The amendment was circulated to role players for comment.

2.6 Rule 70(4) Taxation procedure in the High Court

The Board approved the amendment of rule 70(4) of the High Court Rules and the insertion of a new sub-rule 70(3B). The amendment was circulated to role players for comment.

2.7 Amendment of Rule 50(5) of High Court Rules

The Board approved the amendment of rule 50(5) of the High Court Rules. The amendment was circulated to role players for comment.

2.8 Amendment of Rule 58 of High Court Rules

The Board approved the amendment of rule 58 by the insertion of sub-rule 5(A) to provide that the claimant in interpleader proceedings should specify an address for service. The amendment was circulated to role players for comment.

2.9 Insertion of sub-rule 49(1)A of High Court Rules

The Board approved the amendment of rule 49 of the High Court Rules.

2.10 Amendment of Rule 63A of High Court Rules

The Board approved the amendment of rule 63A of the High Court Rules in regard to the authentication of documents.

2.11 Amendment of Rule 10A of High Court Rules

The Board approved the amendment of rule 10A of the High Court Rules in regard to notice of proceedings.

3. CONFERENCES AND WORKSHOPS

On 7 March 2005, the Rules Board invited judges, magistrates, legal practitioners and academics to an expert meeting to discuss the draft rules to be compiled in terms of the Promotion of Administrative Justice Act, 2000.

B. PRIORITIES – 2006

3. RULES CURRENTLY UNDER CONSIDERATION BY THE RULES BOARD

3.1 Constitutional validity of rules governing execution procedures in the Magistrate and High Courts

In the case of *Jaftha v Schoeman and Others; Van Roooyen, Scholtz and Others* 2005 (2) SA 140 (CC), the court decided that section 66(1)(a) of the Magistrate's Court Act is unconstitutional because of the "failure to provide judicial oversight over sales in execution against immovable property of judgment debtors".

The secretariat drafted amendments to rule 45(1) of the High Court Rules in July 2005 and circulated them to the members of the Board for consideration. The Magistrate and High Court Committees of the Board will meet on 17 March 2006 to consider the proposed amendments. It is also proposed that the rules of court be amended to provide that a reserve price should be set in sales in execution.

3.2 Rules in terms of the Prevention of Organised Crime Act, 1988

The secretariat is presently drafting rules in terms of the Prevention of Organised Crime Act, 1988 in consultation with the National Prosecuting Authority.

3.3 Review of Sheriff's and Attorney's fees

The Costs Committee of the Rules Board held a meeting with the Board of Sheriffs and Institute of Sheriffs on 15 November 2005. A decision was taken to hold a conference on the review of attorney's and sheriff's fees in June 2006. The secretariat is presently conducting a comparative study on fees in other jurisdictions for comparison with the present fee structure.

4. REVIEW OF THE CIVIL JUSTICE SYSTEM

There is an urgent need for a complete and in-depth review of the rules of court. In November 1995 the Rules Board committed itself to streamlining the court procedures with the view to promoting speedy and affordable access to justice. Prof Erasmus was asked to draft a set of core rules. The harmonisation project was embarked on in 2001 but was not completed.

The Rules Board secretariat is presently conducting research and a comparative study into appropriate methodologies for review of the civil justice system.