



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA

16 April 2024

Our ref: MCele (MCR 72 URC 41A)

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 72 (NOTICE AGREEING TO OR OPPOSING MEDIATION): HARMONISATION OF THE MAGISTRATES' COURTS MEDIATION RULES WITH UNIFORM RULE 41A

The Rules Board for Courts of Law (Rules Board) has considered aligning the provisions of Magistrates' Courts Rule 72 with the provisions of Uniform Rule 41A(2), which regulate notice agreeing to or opposing mediation in the Magistrates' Courts and the High Court, respectively.

During 2023, and arising out of operation of Uniform Rule 41A in practice and out of certain judgments, the Rules Board considered that certain amendments to the rule were either necessary or at least desirable for achieving the objects of mediation and the rule.

For the reason mentioned above, the Rules Board considered that in urgent applications there is no provision for what should occur if a party is unable to comply with the provisions of subrule (2) of Uniform Rule 41A, in particular the notice required, especially in applications launched in terms of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

In addressing the above issue, the Rules Board considered that Uniform Rule 41A should be amended by inserting a proviso to subrule (2) to indicate that "in urgent applications the court or a judge may dispense with compliance with paragraphs (a) and (b).".

As part of its rule review function, the Rules Board has considered harmonizing the equivalent provisions in the Magistrates' Courts Mediation Rules.

Magistrates' Courts Rule 72:

- (a) The amendments proposed to MCR 72 are to subrule (2).
- (b) MCR 72 is proposed to be amended by inserting a proviso to subrule (2) of MCR 72 which would allow the court or a magistrate in urgent applications to dispense with compliance with subrules (1) and (2).

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

Justice N Dambuza (Chairperson) | Justice N Mabindla-Bogwana (Vice Chairperson) | Adv S Jikela SC | Ms J Wessels | Adv K Kollapen | Mr M Maliwa | Ms N S Khanyile | Mr R R Titus | Mr V P Maluleke | Professor T Broodryk | Adv P Setati | Mr O M Krieling | Mr J Balkishun

In addition, the Rules Board considered repealing MCR 79 which provides for costs. The Rules Board considered that the provisions of MCR 79 offend the voluntary nature and confidentiality of the mediation process.

Draft amended MC Mediation Rules are attached for consideration. **[ANNEXURE A]**

Uniform Rule 41A:

Regarding amendments to URC 41A, the Rules Board considered that:

- (a) The provisions of subrule (9)(b) which is the equivalent of MCR 79, should be similarly repealed; and
- (b) The existing subrule (9)(a) will become subrule (9).

Draft amended Uniform Rule 41A is attached for consideration. **[ANNEXURE B]**

As part of its rule-making and consultation process, the Rules Board invites your comments on the draft amendments proposed to the Magistrates' Courts Mediation Rules and Uniform Rule 41A marked Annexure A and B, respectively.

Your comments and inputs should be submitted to the Secretariat of the Rules Board by no later than **30 June 2024** 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,



F NJOBE

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