



**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

8 July 2022

Our ref: CK/JB/TR/13/3/2/6

Your ref:

Per: e-mail

Dear Sir/Madam,

1. PROPOSED NEW UNIFORM RULE 67A (COSTS)
2. PROPOSED AMENDMENTS TO UNIFORM RULE 69 (TARIFF OF FEES FOR LEGAL PRACTITIONERS WHO APPEAR IN THE SUPERIOR COURTS)

In the course of its Rule making and review process, the Rules Board for Courts of Law (Rules Board) has considered introducing a new rule into the Uniform Rules, to regulate the recovery and taxation of costs generally, as well as amendments to Uniform Rule 69 to regulate the fees recoverable for practitioners who appear in the Superior Courts.

The proposed new general rule to regulate costs is intended to be Uniform Rule 67A which is intended primarily to:

- (a) regulate which of the tariffs in Uniform Rule 69 and Uniform Rule 70 apply to the different categories of legal practitioners;
- (b) indicate factors which a court must consider when making an order for costs;
- (c) require a court to set the scale of fees applicable to legal practitioners who appear in the Superior Courts, sub-rule (3)(b) lists the factors the court must consider when determining the scale on which costs is allowed, as set out in Uniform Rule 69(7);
- (d) require a court to direct which portions of the proceedings are urgent. This provision links to the higher fee for certain items proposed in Uniform Rule 70, relating to urgent matters;
- (e) require a court to determine whether the employment of more than one advocate was necessary and in such event, the scale applicable for such additional advocate's fees; and

(f) allow the taxing master to have regard to any guidelines recommended by the regional branch of the Legal Practice Council in the Division or at the seat of the court which awarded costs, where the tariff item or scale requires the exercise of discretion by the taxing master.

Certain aspects of Uniform Rule 39(24) namely, prolixity and the leading of evidence have been incorporated into paragraphs (c) and (d) of sub-rule (2) of proposed new URC 67A. Sub-rule 39(24) is therefore proposed to be repealed.

The proposed amendments to Uniform Rule 69 are intended to provide recovery tariffs for legal practitioners who appear in the Superior Courts, which hitherto has not been provided for or regulated for purposes of taxation. The proposed amendments also arise largely out of the factors regulated by proposed new Uniform Rule 67A as indicated above. A new dimension proposed to be introduced is scales of fees, which a court must determine, apply in a case, based on the factors which are indicated in the subrule (3)(b) of Uniform Rule 67A.

Role-players are also referred to the 'note' in respect of subrule (7) of Uniform Rule 69 for comment.

Proposed new draft rule Uniform Rule 67A is attached.

ANNEXURE RB1

Proposed amended draft Uniform Rule 69 is attached.

ANNEXURE RB2

As part of its consultation in the rule making process, the Rules Board invites your comments on proposed new Uniform Rule 67A and the proposed amendments to Uniform Rule 69. Comments must be submitted on or before **31 August 2022** and may be delivered to the Secretariat of the Rules Board in any of the following ways:

Physical: 2nd Floor, East Tower, Centre Walk, 266 Pretorius Street, Pretoria.

Email: TRamantsi@justice.gov.za

Postal: P O Box 13106, The Tramshed (0126).

Enquiries may also be directed to Mrs. C. Kemp 012 326-8014 or via email at ChKemp@justice.gov.za.

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

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Yours Sincerely



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ANNEXURE RB1

PROPOSED NEW UNIFORM RULE 67A

GENERAL EXPLANATORY NOTE:

[] Expressions in bold type in square brackets indicate omissions from existing rules.

— Expressions underlined with a solid line indicate insertions into existing rules.

67A COSTS

(1) Subject to any order of the court awarding costs, the fees and disbursements as between party and party, which may be included in a bill of costs submitted for taxation, shall be—

(a) for attorneys, in accordance with the tariff in rule 70;

(b) for attorneys, with a right to appear in the Superior Courts and who appear in a matter, in accordance with rule 69 and 70, where applicable; and

(c) for advocates, in accordance with the tariff in rule 69: Provided that for services rendered by an advocate referred to in section 34(2)(a)(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014), for work which is ordinarily performed by an attorney, the fee for such work shall be in terms of rule 70.

(2) In awarding or disallowing costs to any party, a court shall take into account—

(a) the provisions of rule 41A;

(b) failure by any party or such party's legal representative to comply with the provisions of rules 30A; 37 and 37A;

(c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed;

(d) unnecessary time spent in leading evidence, cross examining witnesses and argument;

(e) the conduct of the litigation by any party's legal representative and whether such representative should be ordered to pay such costs in his or her personal capacity;

(f) whether the litigation should have been conducted out of the magistrates' court; and

(g) any other factor which the court considers necessary to make a just or equitable award.

(3)(a) A costs order shall indicate the scale in terms of rule 69, under which costs have been granted.

(b) In considering the appropriate scale the court shall have regard to the following factors:

(i) the complexity of the matter;

- (ii) the value of the claim or importance of the relief sought;
- (iii) the factors in subrule (2); and
- (iv) any other factor which the court considers relevant to make a just and equitable award.

(4) A costs order shall indicate—

- (a) which portions of the proceedings were deemed urgent; and
- (b) whether the fees consequent upon the employment of more than one advocate are allowed and the scale in terms of rule 69, under which such fees are allowed.

(5) The taxation of fees as between party and party shall be effected by the taxing master in accordance with rules 69 and 70 and the applicable tariffs therein.

(6) Where an item in the tariffs set out in rules 69 or 70 requires the taxing master to exercise a discretion in determining the amount of a fee or disbursement to be allowed for such item, the taxing master may have regard to any guidelines recommended by the regional branch of the Legal Practice Council in the Division or at the seat of the court which awarded the costs.

ANNEXURE RB2

DRAFT PROPOSED AMENDMENTS TO UNIFORM RULE 69

GENERAL EXPLANATORY NOTE:

[] Expressions in bold type in square brackets indicate omissions from existing rules.

___ Expressions underlined with a solid line indicate insertions into existing rules.

69. Tariff of **[maximum]** fees for **[advocates]** legal practitioners who appear in the Superior Courts **[on party and party basis in certain civil matters]**

(1) Save where the court authorizes fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party.

(2) Where fees in respect of more than one advocate are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate shall **[, not exceed one half of those allowed in respect of the first advocate]** be on a scale in terms of subrule (7) hereof, as directed by the court.

[(3) Save where the defendant or respondent is awarded costs, the tariff of fees for advocates between party and party set out referred to in Part IV of Table A of Annexure 2 to the Rules for the Magistrates' Court, (hereunder referred to as 'the tariff') shall apply where the amount or value of the claim falls within the jurisdiction of the magistrates' court, unless the court, on request made before or immediately after the giving of judgment, otherwise directs.]

(4)...

[Subrule (4) deleted by GN R185 of 2 February 1990.]

[(5) The taxation of advocates' fees as between party and party shall be effected by the taxing master in accordance with this rule and, where applicable the tariff. Where the tariff does not apply, he shall allow such fees (not necessarily in excess thereof) as he considers reasonable.

[(6) For advocates referred to in section 34(2)(a)(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014), the tariff of fees as between party and party shall be in accordance with this rule and the tariff in Rule 70, whichever tariff items are applicable to the services rendered by the advocate: Provided that where an attendance performed by an advocate constitutes a service ordinarily performed by an attorney, the tariff in Uniform Rule 70 shall apply to that attendance.]

(7) The scales of fees contemplated by subrule (3) of rule 67A shall be:

<u>SCALE A</u>	<u>SCALE B</u>	<u>SCALE C</u>
<u>R1500,00 per hour</u> <u>(maximum allowed)</u>	<u>R3000,00 per hour</u> <u>(maximum allowed)</u>	<u>R4500,00 per hour</u> <u>(maximum allowed)</u>
<u>R375,00 per quarter of an hour (maximum allowed)</u>	<u>R750,00 per quarter of an hour (maximum allowed)</u>	<u>R1125, 00 per quarter of an hour (maximum allowed)</u>

Note:

1. Role-players are requested to provide comment on whether for subrule (7), the rate should be per hour or per quarter of an hour.
2. The 'TARIFF OF FEES' below will be amended to refer to the preferred rate (per hour or per quarter of an hour) once the rate in subrule (7) is finalised.

(8) The tariff of fees to be allowed for work performed by legal practitioners in terms of this rule shall be:

TARIFF OF FEES

1. (a) Appearances in court for trial: a day fee inclusive of preparation, heads of argument, consultation and appearance on that same day.

(b) Appearances in court for opposed applications:

(i) for the first day, a day fee inclusive of preparation, heads of argument, consultation and appearance on that same day; and

(ii) for subsequent days: the per quarter/hourly rate.

2. Appearances in court: unopposed applications including but not limited to exceptions, motions to strike out, stated cases, appeals from Magistrates' Courts, review proceedings, noting reserved judgments, formal unopposed postponements: the per quarter / hourly rate.

3. A per quarter / hourly rate for-

(a) Preparation for hearing;

(b) Conferences: pre-trial and case-management;

(c) Drafting and settling affidavits, pleadings and other necessary documents;

(d) Consultations; and

(e) Perusal.

4. In the event that a trial or opposed application is postponed, settled or withdrawn at the instance of any party on the day of hearing or before the first day's hearing and a charge for the cancellation of the reservation of any day is levied, a reservation fee may be allowed as follows:

(a) If settled or postponed on the day of set down or two days before that, a full first day fee;
or

(b) If settled or postponed three to seven days before the day of set down, two thirds of a day fee;

Provided that no reservation fee will be allowed if a matter is settled or postponed more than seven days before the day of set down.