



**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

16 October 2019

Our ref: J Balkishun/N Maseko

Your ref:

Dear Sir/Madam,

**PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 54 AND PROPOSED
INSERTION OF FORM 59: ACTIONS BY AND AGAINST PARTNERS, A PERSON CARRYING
ON BUSINESS IN A NAME OR STYLE OTHER THAN HIS OR HER OWN NAME, AN
UNINCORPORATED COMPANY, SYNDICATE OR ASSOCIATION**

The Rules Board for Courts of Law is in the process of reviewing and amending Magistrates' Courts Rule 54.

Some of the envisaged amendments are aimed at aligning the rule with corresponding Uniform Rule 14 of the High Court, albeit with appropriate adjustments. This also entails introducing a new Form 59 into the Magistrates' Courts Rules, designed along the lines of Form 8 of the Uniform Rules, with variations.

The proposed amendments to Magistrates' Courts Rule 54 and Form 59 are contained in the annexure hereto. **[ANNEXURE A]**

As part of its consultative process, the Rules Board hereby invites your comments on the proposed amendments, for submission to the Secretariat by no later than **13 December 2019**.

Submissions can be sent via hand delivery, post, facsimile or email as follows:

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


POSTAL ADDRESS: P. O. Box 13106, The Tramshed, 0126.

FACSIMILE: (012) 326 8018.

EMAIL: Mr. Nkosinathi Maseko (NMaseko@justice.gov.za).

Further enquiries may be directed to (012) 326 8014 / 8045.

Yours sincerely,



J BALKISHUN
Acting Secretary
Rules Board for Courts of Law
2nd Floor Centre Walk East Tower
266 Pretorius Street Pretoria
Tel: 012 326 8045 Fax: 012 326 8018
E-mail: JBalkishun@justice.gov.za

**PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 54 PLUS
INSERTION OF FORM 59**

GENERAL EXPLANATORY NOTE:

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

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

Substitution of rule 54 of the Rules

2. The following rule is hereby substituted for rule 54 of the Rules:

[54. Actions by and against partners, a person carrying on business in a name or style other than his or her own name, an unincorporated company, syndicate or association

(1)(a) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action.

(b) In any case referred to in paragraph (a) any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) A party receiving a notice in terms of subrule (1) (a) shall, within 10 days after receipt thereof, deliver the statement required.

(3) When the names of the partners are declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.

(4) Any person carrying on business in a name or style other than his or her own name may sue or be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall also *mutatis mutandis* apply to an unincorporated company, syndicate or association.

(6) When action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association in the name of the firm or in such name or style or in the name of the company, syndicate or association, as the case may be, the court may on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company, syndicate or association, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).]

“54. Proceedings against non-juristic persons as a matter of procedural convenience

(1) In this Rule –

“association” means any unincorporated body of persons that is not a partnership;

“entity” means an association, partnership, firm or sole proprietorship;

“firm” means an unincorporated business;

“partnership” means an arrangement whereby two or more persons undertake to contribute towards an enterprise to be carried on jointly by them with the object of making a profit and sharing it between them;

“plaintiff” and “defendant” includes an applicant and respondent;

“relevant date” means the date when the cause of action arose;

“sole proprietorship” means a business that is carried on by the sole proprietor under a name and style other than his or her own; and

“sue” and “sued” are used in relation to actions and applications.

(2) A plaintiff (whether in convention or reconvention) may sue an entity in the name of the entity.

(3)(a) Where an entity is sued, the plaintiff must serve a notice calling upon the defendant to deliver a statement within 10 days containing the full names, residential, business or employment addresses of all its members, partners or proprietors as at the relevant date.

(b) If the defendant fails to deliver a statement contemplated in paragraph (a), the plaintiff may on notice make application to court to compel the defendant to deliver a statement within five days and should the defendant fail to comply, the plaintiff may apply to court to:

(i) strike out the defendant's defence, where such a defence has been filed, and to grant judgment, which shall be executable against the entity's assets as is permitted by law; or

(ii) declare any person whom the plaintiff reasonably believes to be a member, partner or proprietor of the defendant at the relevant date: Provided that the application must be served on the alleged member, partner or proprietor, as the case may be.

(c) The court hearing an application contemplated in paragraph (b) may make any other order as it deems appropriate.

(d) When the names of persons are declared in terms of paragraph (b)(ii), the action shall proceed in the same manner and with the same consequences as if the persons were named in the summons, but all proceedings shall nevertheless continue in the name of the entity.

(e) Where the defendant delivers a statement contemplated in paragraph (a), the plaintiff must, after receiving the statement, serve a notice corresponding substantially with Form 59 together with a copy of the summons to each member, partner or proprietor calling on them to deliver a notice of intention to defend within 10 days.

(f) If a member, partner or proprietor fails to defend proceedings contemplated in paragraph (e), the action shall proceed in the same manner and with the same consequences as if that person was named in the summons, but all proceedings shall nevertheless continue in the name of the entity.

(g) If a party disputes being a member, partner or proprietor of an entity at the relevant date and takes the steps set out in Form 59, including the delivery of a plea, the court may at trial decide that issue *in limine*: Provided that the action shall continue in the name of the entity.

(4)(a) A plaintiff suing an association may serve a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the office-bearers and their respective offices as at the relevant date.

(b) The notice referred to in paragraph (a) must be complied with within 10 days of receiving the notice, failing which the plaintiff may apply to court for an order to comply with the notice.

(c) Paragraphs (a) and (b) shall apply with necessary changes to a defendant sued by an association.

(5) Execution of a judgment against an entity must first be levied against the assets thereof, and, after such excussion and, if permitted by law, against the assets of any person held to be a member, partner or proprietor, as if judgment had been entered against such a person."

Amendment of Annexure 1 to the Rules

3. Annexure 1 to the Rules is hereby amended—

(a) by the insertion after Form 58 of Form 59 contained in the Annexure hereto.

ANNEXURE

No. 59 – Notice to alleged member, partner or proprietor

*For use in the District Court

In the Magistrate's Court for the District of
held at..... Case No..... of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

TAKE NOTICE that action has been instituted by the above-named plaintiff against the above-named defendant for the sum of R.....
and that it is alleged that the above-named defendant is an association, partnership, firm or sole proprietorship of which you were from to a member, partner or proprietor.

If you dispute that you were a member, partner or proprietor or that the above-mentioned period is in any way relevant to your liability as a member, partner or proprietor or that the defendant is liable you must within 10 days of the service of this notice give notice of your intention to defend.

To give such notice you must file with the clerk of the court and serve a copy thereof upon the plaintiff at the address set out below a notice stating that you intend to defend.
In such a notice:

(i) you are required to give your full physical, residential or business address, postal address and where available, facsimile and electronic mail address;

(ii) you are further required to indicate the preferred address for service upon you of all documents in the application, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order or practice of the court; and

(iii) if a physical address is given by you as your preferred address for the purpose of service, that address must, in places where there are three or more attorneys or firms of attorneys practicing independently of one another, be within 15 kilometres of the courthouse.

Thereafter you should deliver a plea in which you may dispute that you were a member, partner or proprietor or that the period alleged above is relevant or that the defendant is liable, or all three of these matters.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named defendant is held liable you will be liable to have execution issued against you, should the defendant's assets be excused in execution and be insufficient.

DATED at this day of 20.....

Attorney for

(Address)

(N.B. In application proceedings this form should be appropriately altered.)

No. 59 - Notice to alleged member, partner or proprietor

***For use in the Regional Court**

In the Regional Court for the Regional Division of
held at Case No. of 20.....

In the matter between

..... Plaintiff

and

..... Defendant

TAKE NOTICE that action has been instituted by the above-named plaintiff against the above-named defendant for the sum of R.....
and that it is alleged that the above-named defendant is an association, partnership, firm or sole proprietorship of which you were from to a member, partner or proprietor.

If you dispute that you were a member, partner or proprietor or that the above-mentioned period is in any way relevant to your liability as a member, partner or proprietor or that the defendant is liable you must within 10 days of the service of this notice give notice of your intention to defend.

To give such notice you must file with the registrar of the court and serve a copy thereof upon the plaintiff at the address set out below a notice stating that you intend to defend.
In such a notice:

(i) you are required to give your full physical, residential or business address, postal address and where available, facsimile and electronic mail address;

(ii) you are further required to indicate the preferred address for service upon you of all documents in the application, and service thereof at the address so given shall be valid and effectual, except where personal service is required by an order or practice of the court; and

(iii) if a physical address is given by you as your preferred address for the purpose of service, that address must, in places where there are three or more attorneys or firms of attorneys practicing independently of one another, be within 15 kilometres of the courthouse.

Thereafter you should deliver a plea in which you may dispute that you were a member, partner or proprietor or that the period alleged above is relevant or that the defendant is liable, or all three of these matters.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named defendant is held liable you will be liable to have execution issued against you, should the defendant's assets be excussed in execution and be insufficient.

DATED at this day of 20.....

Attorney for

.....

(Address)

(N.B. In application proceedings this form should be appropriately altered.)