

19 Notice of intention to defend

RS 22, 2023, D1 Rule 19-1

(1) Subject to the provisions of section 24 of the Act, the defendant in every civil action shall be allowed 10 days, after service of summons on such defendant, within which to deliver a notice of intention to defend, either personally or through an attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.

[Subrule (1) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and by GN R1343 of 18 October 2019.]

(2) In an action against any Minister, Deputy Minister, Premier or a Member of an Executive Council, officer or servant of the State, in an official capacity, or the State, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorised a shorter period.

[Subrule (2) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987, by GN R608 of 31 March 1989, by GN R2410 of 30 September 1991 and by GN R1343 of 18 October 2019.]

(3)(a) When a defendant delivers notice of intention to defend, defendant shall therein give defendant's full residential or business address, postal address and where available, facsimile address and shall also appoint an address, not being a post office box or poste restante, within 25 kilometres of the office of the registrar and an electronic mail address where available, for the service on defendant at either address of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

[Paragraph (a) substituted by GN R3397 of 12 May 2023.]

(b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

[Subrule (3) substituted by GN R2021 of 5 November 1971, by GN R2164 of 2 October 1987, by GN R2642 of 27 November 1987 and amended by GN R960 of 28 May 1993 and substituted by GN R464 of 22 June 2012.]

(4) A party shall not by reason of delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

[Subrule (4) substituted by GN R1343 of 18 October 2019.]

RS 22, 2023, D1 Rule 19-2

(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

[Subrule (5) inserted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

Commentary

Form. Notice of agreement or opposition to mediation, 27.

General. This rule, which is subject to the provisions of [s 24](#) of the Superior Courts [Act 10 of 2013](#), provides for the time periods within which notice of intention to defend in civil actions must be delivered. In terms of rule 1 'action' means 'a proceeding commenced by summons'.

The purpose of the time allowed for entering an appearance is to ensure that the defendant has sufficient time to deliver a notice of intention to defend the action if the defendant so wishes. ¹ See also the notes to [s 24](#) of the Superior Courts [Act 10 of 2013](#) s v 'The time allowed for entering an appearance' in Volume 1 third edition, Part D.

The delivery of a notice of intention to defend is not a further step as contemplated in rule 30(2)(a) but is merely an act done with the object of qualifying the defendant to put forward his defence. ² Rule 19(4) specifically provides that a party shall not by reason of his delivery of notice of intention to defend be deemed to have waived any right to object to any irregularity (or impropriety) in the proceedings.

A notice of intention to defend is, however, a step which, if irregular as contemplated in rule 30(1), can be set aside. It is submitted that a notice of intention to defend will be an irregular step if, for example, it has not been properly signed or delivered or does not comply with the provisions of rule 19(3)(a).

For proposed amendments to rule 19, see Price 'Civil court rules — open to abuse?' 2013 (August) *De Rebus* 29–31.

Subrule (1): 'Subject to the provisions of section 24 of the Act.' [Section 24](#) of the Superior Courts [Act 10 of 2013](#) provides as follows: ³

'24 Time allowed for appearance

The time allowed for entering an appearance to a civil summons served outside the area of jurisdiction of the Division in which it was issued, shall be not less than —

- (a) one month if the summons is to be served at a place more than 150 kilometres from the court out of which it was issued; and
- (b) two weeks in any other case.' ⁴

In instances other than those dealt with in [s 24](#) of the Superior Courts [Act 10 of 2013](#), the provisions of rule 19 apply. There is, however, one exception to this, not mentioned in the rule: where substituted service is directed in terms of rule 5(2), a special period for delivery of notice of intention to defend may be ordered.

RS 22, 2023, D1 Rule 19-3

'The defendant.' A person who is not in fact the defendant to the action and who may have nothing whatever to do with the action may none the less wish to deliver notice of intention to defend, merely in order to secure his dismissal from the proceedings. It is submitted that in such instance the court cannot order costs to be paid to (or by) the party incorrectly served who delivers a notice of intention to defend. Such person will have to issue summons against the plaintiff to recover any costs/expenses incurred by him. ⁵ If the person incorrectly served does not deliver a notice of intention to defend, and the plaintiff upon discovering the mistake wishes to recover his wasted costs from such person on the ground that he misled the sheriff, the plaintiff will also have to issue a summons for costs against the person incorrectly served. If the incorrectly served defendant does not make the mistake clear to the plaintiff (or if someone actually claims that he is the defendant and insists on proceeding with the action despite the plaintiff's willingness to drop the proceedings against him) he will himself have to bear the costs incurred by his foolish persistency. ⁶

A person who has been cited as a defendant and who does not give notice of his intention to defend runs the risk of judgment being given against him by default. ⁷ See further the notes to rule 31(2)(a) below.

A defendant in reconvention need not deliver a notice of intention to defend a claim in reconvention. ⁸

'In every civil action.' In rule 1 'action' is defined as 'a proceeding commenced by summons'.

'Shall be allowed 10 days after service of summons.' The *dies induciae* are to be calculated by excluding the first day (i.e. the day of service) and including the last day. ⁹ Only court days falling within the definition of 'court day' in rule 1 are included in the computation of the *dies induciae*, i.e. Saturdays, Sundays and public holidays are excluded from the computation.

Where service is effected outside the area of jurisdiction of the court, the *dies induciae* are laid down by [s 24](#) of the Superior Courts [Act 10 of 2013](#). See, in this regard, the notes to this subrule *s v* 'Subject to the provisions of section 24 of the Act' above.

'To deliver a notice of intention to defend.' In terms of the definition of 'deliver' in rule 1, the original of the notice of intention to defend must be filed with the registrar and a copy must be served on the plaintiff or his attorney. ¹⁰

A defendant who wishes to defend an action must deliver a notice of intention to defend; it is not correct for a litigant to approach the court by means of a letter addressed to the registrar. ¹¹

RS 22, 2023, D1 Rule 19-4

Notice of mediation. Rule 41A(2)(b) provides that a defendant must, when delivering a notice of intention to defend an action, or at any time thereafter, but not later than the delivery of a plea, serve on each plaintiff or the plaintiff's attorneys, a notice indicating whether such defendant agrees to or opposes referral of the dispute to mediation. The notice must be substantially in accordance with Form 27 of the First Schedule and must clearly and concisely indicate the reasons for the defendant's belief that the dispute is or is not capable of being mediated. ¹² The notice must not be filed with the registrar. ¹³ See further the provisions of rule 41A below.

'Either personally or through an attorney.' The word 'personally' in the subrule does not include an act performed by an agent of the defendant — the party must either act in person or through an attorney. ¹⁴ A juristic person cannot validly give notice of intention to defend in person but must do so through an attorney. ¹⁵ It has, however, been held that a close - corporation is entitled to deliver a notice of intention to defend through its managing member (who held an 80% member's interest) and to be represented by such member in the ensuing legal proceedings. ¹⁶

In rule 1 'attorney' is defined as 'a legal practitioner as defined, admitted and enrolled as such, under the Legal Practice Act, 2014 ([Act 28 of 2014](#))'. A defendant is therefore not entitled to deliver a notice of intention to defend through a candidate attorney.

Subrule (2): 'In an action against any Minister . . . in an official capacity, or the State.' In an action against any Minister, etc in an official capacity, or the State, the time allowed for delivery of a notice of intention to defend must not be less than 20 days after service of summons. The court is, however, entitled to specially authorize a shorter period. It is submitted that good cause needs to be shown by a plaintiff who seeks a reduction of the period.

Subrule (3)(a): 'Shall therein give.' The subrule stipulates the various addresses to be provided by the defendant in the notice of intention to defend for purposes of service of documents in the action on the defendant. The subrule must be read together with rule 4A above, which provides, amongst other things, that service may be effected:

- (a) by hand at the physical address for service provided, or
- (b) by registered post to the postal address provided, or
- (c) by facsimile or electronic mail to the respective addresses provided.

See also rule 34(8) below.

Subrule (3)(d): 'If the plaintiff refuses or fails to deliver the consent . . . the court may, on application by the defendant, grant such consent.' It is a prerequisite that, in terms of paragraph (c) of subrule (3), the defendant must first in writing request the plaintiff to consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail. Only if the plaintiff refuses or fails to provide such consent in writing can the defendant apply to court for the granting of consent. In the absence of a request/application for consent, service by way of facsimile or electronic mail is improper. ¹⁷

RS 22, 2023, D1 Rule 19-5

Subrule (4): 'Shall not . . . be deemed to have waived.' In other words, a party who has delivered a notice of intention to defend is still entitled to object to the jurisdiction of the court, or to apply to set aside the summons as an irregular step in terms of rule 30, or to deliver an exception or application to strike out in terms of rule 23.

Subrule (5): ' . . . notice of intention to defend may be delivered even after expiration of the period.' Notwithstanding the period allowed for delivery of a notice of intention to defend, the defendant may in terms of this subrule deliver a notice of intention to defend even after expiration of such period, provided default judgment (under rule 31(2)(a)) has not yet been granted. The effect of this subrule is that the late delivery of a notice of intention to defend does not entitle a plaintiff to apply for or proceed with an application for default judgment. ¹⁸

See the notes to rule 31(2)(a) *s v* 'Defendant is in default of delivery of notice of intention to defend or of plea' below.

The subrule provides that if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default, the plaintiff shall be entitled to costs.

¹ See *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* [1991 \(1\) SA 823 \(T\)](#) at 824.

² *Winship NO v Jonsson's Executors* (1926) 47 NPD 43; *Oosterlak v Union Artco (Pty) Ltd* 1931 WLD 101; *Petterson v Burnside* 1940 NPD 403 at 406; *Singh v Vorkel* [1947 \(3\) SA 400 \(C\)](#) at 407; *African Guarantee & Indemnity Co Ltd v Mills NO* [1955 \(2\) SA 522 \(T\)](#); *Killarney of Durban (Pty) Ltd v Lomax* [1961 \(4\) SA 93 \(D\)](#); *Western Bank Bpk v De Beer* [1975 \(3\) SA 772 \(T\)](#) at 775A.

³ See further the notes to [s 24](#) of the Superior Courts [Act 10 of 2013](#) in Volume 1 third edition, Part D.

⁴ See further the notes to [s 24](#) of the Superior Courts [Act 10 of 2013](#) in Volume 1 third edition, Part D.

⁵ See *Terblanche v Oudtshoorn Municipality* (1896) 13 SC 275; *Brinkhuis v Rasoolsha* (1908) 25 SC 56; *Matoko v Wellbeloved* 1911 OPD 54; *Stoffberg v Augustyn* 1916 CPD 477.

⁶ In *Advans Ty-Re-Pair Co v King* 1937 OPD 86 the person who received the summons was not the defendant cited therein, but a person wholly unconnected with the action. He entered appearance. At this stage the plaintiff's attorney should have told him that he was not the defendant intended, but did not. The case reached the magistrate's court and there the plaintiff's attorney did tell the 'defendant' that he was not the person cited, that he had no business to put himself forward as defendant, had no *locus standi* to defend, and was never intended to be sued. Up to this stage the court would have granted him his wasted costs (i.e. of the hearing). The 'defendant', instead of accepting that he was not the defendant and simply claiming the wasted costs, insisted on carrying on. The case was dismissed and the 'defendant' took the matter on appeal, still insisting that he was the defendant. The court of appeal refused to countenance any further this 'Gilbertian situation

which reminds one of a scene from "Alice in Wonderland" ' (at 93) and dismissed the appeal with costs. See also *Mutsi v Santam Versekeringsmaatskappy Bpk* [1963 \(3\) SA 11 \(O\)](#) at 16–17.

[7](#) *Anastassiades v Central Mining and Investment Corporation Ltd* [1955 \(3\) SA 53 \(W\)](#) at 54F.

[8](#) Cf rule 24(1) below.

[9](#) See [s 4](#) of the Interpretation [Act 33 of 1957](#) and the definition of 'court day' in rule 1; *Lewis Cox & Co (Pty) Ltd v Twentydale Services (Pvt) Ltd* [1956 \(2\) SA 198 \(SR\)](#).

[10](#) *Wahl v Prinswii Beleggings (Edms) Bpk* [1984 \(1\) SA 457 \(T\)](#) at 460G–H.

[11](#) *Anastassiades v Central Mining and Investment Corporation Ltd* [1955 \(3\) SA 53 \(W\)](#) at 54E.

[12](#) Rule 41A(2)(c).

[13](#) Rule 41A(2)(d).

[14](#) *Volkskas Motor Bank Ltd v Leo Mining Raise Bone CC* [1992 \(2\) SA 50 \(W\)](#) at 54B–D.

[15](#) *Arma Carpet House (Johannesburg) (Pty) Ltd v Domestic & Commercial Carpet Fittings (Pty) Ltd* [1977 \(3\) SA 448 \(W\)](#).

[16](#) *Mittal Steel South Africa Ltd t/a Vereeniging Steel v Pipechem CC* [2008 \(1\) SA 640 \(C\)](#) at 648F–649A and 652H–653F.

[17](#) *Werner Stander Development CC v Aquaculture Engineering* (unreported, GP case no 30511/2020 dated 25 July 2022) at paragraphs [27]–[28].

[18](#) See *Washaya v Washaya* [1990 \(4\) SA 41 \(Z\)](#).