

PAGE OF CONTENTS

COPYRIGHT ACT 98 OF 1978

CONTRIBUTORS

PREFACE

MODULE: SERVICE

CONCLUSION

REFERENCE

© 2004 South African Board for Sheriffs

Reproduced, printed and published by the South African Board for Sheriffs

In terms of the Copyright Act 98 of 1978, no part of this material may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, published, redistributed, screened or used in any form without prior written permission from the South African Board for Sheriffs. Where materials have been used from other sources, permission must be obtained from the original source.

CONTRIBUTORS

- S. Ismail
- J. Fourie (Senior)
- R Schilz
- Mrs. M. de Kock
- J. Fourie (Junior)
- R. Maree
- N. Govender
- I. Mahomed
- C. De Wet

DESIGN AND DEVELOPMENT TEAM:

- Moderator : Mrs. C. Adams
- Instructional Designer : P. Mahlangu
- Editor : Mrs. T. Forbay
- Graphic Design : Mrs. P. Phetla

PREFACE

Module: SERVICE

LEARNING OUTCOME

1. WELCOME
2. PURPOSE
3. DESIGN OF THE MATERIAL
4. SUBJECT CONTENT
5. CRITICAL OUTCOMES
6. MODULE LAYOUT
7. GRAPHIC ILLUSTRATIONS AND ICONS

REFLECTION

REFERENCES

LEARNING OUTCOME

After studying this module, you should be able to:

- Apply procedures and serve processes in compliance with relevant legislation and standards.

1. WELCOME

Welcome to Module 4: Service. This guide covers manner of service as performed by sheriffs. We trust you will find working through the guide a learning experience that is very interesting and rewarding, and that it will add value not only to your studies but also to your personal life in general.

We believe in the importance of developing a culture of learning and are therefore committed to helping you develop your capacity to perform to the best of your potential and to become not only a successful sheriff, but also an independent life-long learner.

In terms of the Autonomy of your learning, the facilitator expects of you to:

- Take personal responsibility and initiative
- Learn within a structured environment
- Critically evaluate your own performance against set criteria
- Identify your own learning needs within defined contexts

2. PURPOSE

The information in this guide reflects the need of the sheriffing community for competencies that will enable the learner to take responsibility for the serving of documents and execution of judgements within the legal framework within which they operate. In addition, it will improve the quality with which sheriffs' duties are exercised and enhance the professional image of the sheriffing community while contributing towards greater confidence in the sheriffs' profession as a core part of the civil justice system.

This course provides learners with opportunities for professional development as a law enforcement officer or as a sheriff.

3. DESIGN OF THE MATERIAL

We followed an outcomes-based approach during the design of this module, which means that, after having worked systematically through the module — doing what is required — you will have achieved some very specific learning outcomes determined by the industry of the sheriff.

These learning outcomes have been broken down into smaller chunks that we call assessment criteria. These appear in the introduction of each module or unit. If you focus on achieving these criteria, you will achieve success.

4. SUBJECT CONTENT

The content is divided various sections.

Once you have worked through all the sections you will be able to:

- Define the term ‘service’
- Differentiate between various legislation that impact on the function of service as performed by the sheriff
- Discuss the sheriff’s return of service.

The sum of the above assessment criteria will be equal to the learning outcome.

The content of this module was put together specifically to guide you through the assessment activities. Do put in the extra effort to consult other sources. You will reap the benefits.

5. CRITICAL OUTCOMES

Other crucial outcomes, you also have to achieve, are those we refer to as critical outcomes. These are the outcomes that will help you develop as life-long learners in your studies, work and personal lives. The critical outcomes are summarised as follows:

5.1 Identifying and solving problems in which responses display that responsible decisions, using critical and creative thinking, have been made during the:

- performance of the duty of service

- utilization of the various manners of service
- 5.2 Working effectively with others as a member of a team or group or organisation or community by:
 - liaising and establishing relationships with stakeholders and community members
- 5.3 Organising and managing oneself and one's activities responsibly and effectively by:
 - following processes, procedures and protocols
- 5.4 Collecting, analysing, organising and critically evaluating information to better understand and explain when:
 - gathering information and undertaking research
 - applying relevant laws
- 5.5 Communicating effectively using visual, mathematical and/or language skills in the modes of oral and/or written persuasion when:
 - Generating documents
 - Communicating with diverse clients
 - Performing administrative duties
- 5.6 Using science and technology effectively and critically, showing responsibility towards the environment and health of others when:
 - sourcing information on legislation, policies and procedures
 - using computers where available
 - distributing and administering reports
- 5.7 Demonstrating an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation when:
 - distributing and managing information and reports
 - solving complex problems with a number of actors and factors
 - explaining the relationship between stakeholders and shieriffing
 - demonstrating an understanding of cultural diversity in dealing with clients

6. MODULE LAYOUT

Each module comprises the following sections:

- **An introduction**

This serves as an orientation on the particular theme of the module.

- **Assessment activities**

A number of assessment activities appear in each module. These activities were designed for evaluation purposes and form part of the learning and teaching strategy. They will assist you to monitor your own progress in

achieving the stated outcomes.

The assessment activities will help you to:

- focus on the subject matter
- measure whether and/or to what extent learning outcomes and objectives have been achieved
- measure whether and/or to what extent knowledge, skills, values and attitudes are understood and applied
- present ideas and information in an appropriate format
- stimulate your thinking
- summarise the content

- **Content**

Guides you through the prescribed and recommended material for the subject, and gives explanations of specific concepts and terms that are complex.

- **Reflection**

Here a summary or conclusion to each module is provided.

- **References**

A record of all material and sources that were used during the development of the module appears here. Feel free to consult these sources as well as other relevant sources.

You will be required to engage actively with the content of all material and to record the answers to activities.

Each module begins with the learning outcome and ends with a conclusion. Remember to also consider the assessment criteria as you work through the module and make sure that you reach these.

7. GRAPHIC ILLUSTRATIONS AND ICONS

Where possible, we have included graphic illustrations, mind maps, tables and diagrams to assist you in your learning. We have also highlighted the meaning of certain concepts through the use of specific symbols called icons. The purpose of these icons is to emphasise and draw your attention to important aspects of the work and to highlight activities. The various icons have the following meaning:



Example: This indicates that an example has been given in the text to help you understand the point made, solve similar problems or clear up uncertainties.



Activity: This icon indicates that you must perform an activity. This will help you to think about a particular aspect of the work and to apply or practice it. Performing the activities will help you monitor your own progress towards achieving the assessment criteria.



Reference: This icon refers to previous or other study material, cases or sources that relate to the content with which you are busy.



Reflection: This icon indicates an opportunity to reflect whether you have achieved the assessment criteria.



Definitions: This icon indicates that an important explanation or formula is being given. Study the definitions carefully and take care to interpret them correctly, as this will help to keep you on the right track.



Take note: Additional notes are given for further clarification.

NB! Please study these icons carefully and make sure you can apply them effectively.

**REFLECTION
POINT TO PONDER**

You might want to write a short essay about your understanding of how to serve process according to relevant legislation and set standards.

Please do not hesitate to contact your facilitator if you have any problems regarding the content of the subject.

We hope that you will enjoy the challenge of taking an active part in acquiring new skills through this course. Remember one learns best when one enjoys what one is doing.

Most people, looking at a newly-ploughed field, simply see a barren landscape. To a farmer though, this is a sight full of promise. An artist feels the same way about a blank canvas. A musician gets inspired by the silence of an empty hall. What you've got, at the moment, is the perfect space in which to create something.

We wish you success in your studies.

References

1. *South African Board of Sheriffs Learning Guide*. First Edition. Unisa Print Production. Johannesburg. 2003

Module: SERVICE**Learning Outcome**

At the end of this module you should be able to:

- Apply procedures and serve process according to relevant legislation and set standards

The assessment criteria for this module include:

- Defining the term 'service'
- Differentiating between various legislation that impact on the function of service as performed by the sheriff
- Discussing the sheriff's return of service

What learning resources do you need?

- This guide
- Legislation: The Magistrate's Court Act 32 of 1944
The Supreme Court Act 59 of 1959

INTRODUCTION

In this module we will discuss the task or duty of the sheriff to serve process, notices and other documents. We will discuss the meaning of the term serve and thereafter study this important function of sheriffs as outlined in the relevant legislation and case law.

Throughout this module we will indicate the relevant sources to you as well as give practical examples of relevant documentation and real work situations.



Do you know the difference between legislation and case law? Can you mention two other sources of law?

1. What is meant by service?

In the definitions of the rules of the Magistrate's Court the term 'deliver' is listed (except when a summons is served on the opposite party only, and in terms of rule 9) as to file with the clerk of the court and serve a copy on

the opposite party. The terms 'delivery', 'delivered' and 'delivering' have corresponding meanings.

In terms of rule 9(3) of the Magistrate's Court Rules all process shall be served by delivery of a copy of the process in one or other manner prescribed by subrule (3).

'Delivery', according to the Collins English Dictionary (Second Edition) means to carry to a destination (goods or mail), or to hand over.

'Serve' means to be of service to, or to perform an official duty.

The Afrikaans term for serve is 'betekening' which means 'bestel' or 'oorhandig'.

According to J & B (p.37), in this rule (rule 9 of the Magistrate's Court) Act 32 of 1944 the term 'deliver' bears its ordinary meaning, which in the present context is simply 'to hand over'. It does not bear the special meaning attributed to it in rule 2(1) of the Magistrate's Court Rules.

In the Supreme Court a process must be brought to the notice of the opposite party by serving a copy of it and by explaining the nature and contents thereof to the person upon whom service is effected. (Botha NO v Botha 1965 (3) SA 128 (E) at 130).

The service of any legal process must surely mean more than just to hand over the process to the opposite party. There are subrules in the Magistrate's Court Rules and the Supreme Court Rules, which provide for a process to be placed on the main door of the defendant's premises, but these are instances, which are extranormal. The sheriff or his deputy has an obligation to explain the nature and exigencies of the document to the defendant or any one receiving service in his stead. In the Supreme Court, rule 4(1)(a)(iv) provides for the process to be placed on the main door of the premises (*domicilium*).

**ACTIVITY**

After having read the above definitions of the term 'serve' or 'service', formulate and write down your own understanding of the term with specific regard to the function of the sheriff.

2. What must be served?

Process	Notices	Documents



ACTIVITY

Look up the terms process, notice and document.
Now formulate your own definitions with specific reference to the sheriff's context and write it down.

In terms of subrule 9(3) of the Magistrate's Court Rules only service of court process must be served in the manner of service listed in subrule (3). Subrule 9(11) of the Magistrate's Court Rules states that any notice, request, statement or other document which is not a process may be effected by delivery by hand at the address for service or by sending it by registered post.

In terms of the Constitutional Court Rules all process of the Constitutional Court shall be served by the sheriff.

In terms of rule 9(3) of the Magistrate's Court Rules a copy of the process must be served on the opposite party. The copy does not have to be a true copy. In terms of rule 9(4) of the Magistrate's Court Rules the original must be exhibited to the person against whom such process is served if he demands so. Failure to exhibit the original because an original was not available does not entitle the sheriff to withhold the service as required. The party on whom the service was effected can take an exception in terms of rule 17(2) of the Magistrate's Court Rules.

3. When can service be effected?

In terms of rule 9(2) of the Magistrate's Court Rules no process, notices or other documents shall be served on Sundays or public holidays.



REFLECTION

Why do you think this rule was made? Can you think of another example?



It is important to note, however, that an interdict, a warrant of arrest, a warrant of committal and a warrant of attachment of person or property under section 30 bis of the Act may be executed on any day at any hour and at any place.

In the Magistrate's Court any process, notice or documents may be served at any hour of the day or night. The Supreme Court limits the hours to as near as possible to 7h00 and 19h00. In order to expedite the legal process service of any process, notice or document may be effected at any time. This is in line with our modern life style where business does not stop on Saturday after 13h00.

WE WILL NOW FOCUS DIRECTLY ON THE DIFFERENT WAYS IN WHICH A PROCESS, NOTICE OR DOCUMENT MAY BE SERVED AND ALSO COMPARE THE RULES OF THE MAGISTRATE'S COURT AND THE HIGH COURT.

4. Manner of service

4.1 To the said person personally

Personal service is the best form of service. However, where a statute provides for another manner of service (e.g. service of a notice of attachment of immovable property in the Supreme Court), such service will take precedence over other manners of service.

Gamble v Sauer (1890) 7SC323 is authority that personal service is 'such service as would satisfy the court that the process has reached the hands of the person intended to be served.'

In *Meyer v Du Plessis* (1896) 17 NLR 157, in which there was an order allowing edictal citation which directed personal service, service was held good where the deputy sheriff not finding the defendant at his home, which was locked, fastened a copy on the door and on his way back met the defendant and explained the citation to him.

Jones and Buckle also explain that where the sheriff explain the document to the respondent and then hands them to the respondent's wife in the presence of the respondent, such service will probably comply with the

rule.

It appears then that the actual handing over of the process to the defendant personally is not required. The problem will arise where the defendant will not accept service. It might be necessary to leave the process at the premises on such occasion.

In the Colonial Government v Southern Lands Ltd 12 CTR 3 it was held that if the defendant or respondent refuses to take the process, the sheriff can serve it by touching him on the arm with a copy of it and dropping it at his feet.

The Supreme Court Rule 4(1)(a)(I) has a provision which reads as follows: "Provided that where such person is a minor or a person under legal disability, service shall be effected on the guardian, tutor, curator, or the like of such minor or person under legal disability."

Persons under legal disability will include a married woman where the marital power has been excluded. Although this subrule is peremptorily worded, it would seem that in the light of our modern lifestyle service on a married woman will be good if good reasons can be shown, e.g. where the husband lives apart from his wife or where the husband's whereabouts is unknown.

The subrule does not make it clear whether service must be effected upon a minor or other person under legal disability and upon the guardian, tutor, curator or the like as well. It could be argued that the guardian, tutor, curator or the like as well as the minor or person under legal disability must be served with the process.

[MC9 (3)(a), SC4 (1)(a)(I)]

4.2 Or to his duly authorized agent

An agent is the person who is duly authorized to accept service on behalf of the person intended to be served. Whether or not a person has been authorized to accept service is a question of fact. This information will almost always be supplied by the person seeking service. This subsection does not require that the authority be in writing. Rule 4(1)(a)(vi) of the Supreme Court Act 59 of 1959 requires that the authorization be in writing but the authorisation does not have to be in a formal document nor in expressed terms if it can be implied from the agent's written authority.

In Colonial Government v Hall (1909) 19 CTR 941 it was held that an agent is not obliged to accept service; and service on an agent who has full

power to accept service but declines to do so is insufficient.

In the Magistrate's Court it may be possible that even where there is no authority at the time of service the defendant may by his subsequent action ratify the act of the person in accepting service on his behalf. The Supreme Court Rule will require that such ratification be in writing.

Service on the defendant's nearest neighbour whom is not an agent will be bad even if he is willing to accept service.

[MC9 (3)(a), SC4 (1)(a)(vi)]

4.3 At the residence or place of business to some person apparently not less than 16 years of age and apparently residing or employed there

[MC9 (3)(b), SC4 (1)(a)(ii)]

4.4 Residence

Take note that the Magistrate's Court Rule as well as the Supreme Court Rule extend the definition of residence to include that portion of the building that the defendant occupies if the building is occupied by more than one person.

It appears that the residence must be the defendant's present residence, therefore service upon the defendant's mother in the absence of evidence that he resides with her, or upon the brother of the defendant at the railway station near the defendant's residence, or upon the defendant's wife elsewhere than at his residence, will clearly be bad service.

4.5 Place of business

Place of business is not the same as place of employment.

To some person 'apparently'...

Focusing on the word 'apparently' all that is required is that the person must seem to be not less than 16 years old and it must seem that he is employed or residing there.

At his place of employment to some person apparently not less than 16 years of age and apparently in authority over him or, in the absence of such person in authority, to a person apparently not less than 16 years of

age and apparently in charged at his place of employment.

[MC9 (3)(c), SC4 (1)(a)(iii)]

The place of employment must be where he is employed at the time of service, even though he might be on leave at the time of service. However, Service is good if the person is employed at a branch office and the service is effected at the head office or visa versa.

In Solomon v Arkin Motors (Pty) Ltd 1960(4) SA 329 T 330-1 it was held that the subrule cannot be interpreted to mean that service can be effected upon a defendant by delivering a copy of the summons to the secretary of the company by whom he is employed irrespective of the address at which he is employed.

4.6 *Domicilium citandi et executandi*

If the person to be served has chosen a *domicilium citandi* at the *domicilium* so chosen

[MC9(3)(d), SC4(1)(a)(iv)]

A *domicilium citandi* is a place chosen by a person where process in judicial proceeding may be served upon him.

Jones & Buckle states that in terms of subrule (6) a search must be made by the sheriff at the premises and that only after diligent search can he leave the process at the *domicilium*. This might apply to subrule (6), but there is no requirement that a search be made under subrule 3(d). This subrule adopts the well established practice whereby, if the defendant has chosen a place as *domicilium citandi*, service at such place will be good, even though it is a vacant piece of land, or the defendant is known to be resident abroad, or has abandoned the property, or cannot be found, nor can his household or any person who can be regarded as representing him.

4.7 Body Corporate

In the case of a body corporate at its local office or principal place of business within the area of jurisdiction of the court concerned to a responsible employee thereof or in any other manner specially provided by law

[MC9(3)(e), SC4(1)(a)(v)]

The term 'Principal Place of Business' means the main place of business.

Section 170(1) of the Companies Act provides that every company shall have a registered office in the Republic at which all process may be served. This section is permissive and does not purport to make service at the registered office obligatory. It will therefore be a good service if a company is served either at its registered office or local office, or the principal place of business with the jurisdiction of the court. The three places are offered as an alternative. As long as the company has not formally changed their registered address at the Registrar of Companies, service will be good even though the process is left at the registered office which the company has ceased to occupy, or by affixing it to the door, or by serving it upon a partner or employee of the firm, or accountant for the company, which firm now occupies the registered office.

4.8 Authorised Agent

If the plaintiff or his authorised agent has given written instruction to the sheriff to serve by registered post, the process shall be so served.

[MC9(3)(f)]

Although the subrule requires that instructions to serve by post must be made in writing it will be sufficient instruction to post a process if the address on the process only has a postal address on it. In *Geregsbode, Meyerton v KGK (Edms) Bpk 1978 (1)(e)* it was held that where a sheriff serves process by registered post in terms of this subrule and subrule (15), he performs the duties and exercises the powers required entirely within the jurisdiction where the letter is posted, and that he is therefore entitled to serve by registered post a letter addressed to a person outside his jurisdiction.

In terms of *Geregsbode, Meyerton v KGK (Edms) Bpk (op. cit.)* it appears that once the sheriff has performed the functions set out in this subrule, he has served the process as envisaged in subrule (3)(f). Service is accordingly effected at the time the letter is posted, and the *dies induciae* starts to run, however in terms of 12(3) of the Magistrate's Court Rules judgement will not be granted by the clerk of the court unless the acknowledgement of receipt of the registered letter has been filed by the sheriff with his return of service.

The procedure for posting a process by registered post is that the sheriff will place a copy of the process in an addressed envelop and post it by

pre-paid registered post to the address of the party to be served and also making application at the time of registration for an acknowledgement by the addressee of the receipt thereof.

The Supreme Court makes no provision for service by mail except for the serving of the notice of attachment of immovable property in the Supreme Court.

Where the person to be served keeps his residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business

[MC9(3)(5)]

In terms of this rule service must be effected at the current residence or place of business of the person to be served. Service can only be effected in terms of this subrule if it is clear that the person keeps his residence or place of business close to prevent the sheriff from serving the process.

Where the sheriff is unable after a diligent search to find at the residence or the domicilium citandi of the person to be served either that person or the person referred to in subrule (3)(b) or, in the case of a body corporate referred to in subrule(3)(e), a responsible employee, it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence, local office or principal place of business or to leave a copy of the process at such domicilium

[MC9 (6)]

A diligent search is a serious attempt to find the defendant but in *Richards v Meyers* 1909 TS 159 it was held that the search need only be made at the place mentioned in the process, and not another place where the defendant may be.

4.9 Affixing

Where the relief claimed in any action is limited to an order for ejectment from certain premises or land or a judgement for the rent thereof and for the costs of such proceedings and it is not possible to effect service in the manner prescribed in subrule (3), service of process may be effected by affixing a copy thereof to the outer or principal door of such premises or on some other conspicuous part of the premises or land in question

[MC9(7)]

4.10 Other

Where two or more persons are to be served with the same process, service shall be effected upon each, except:

- In the case of a partnership, when service may be effected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner herein prescribed;
- In the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidator of a company, executor, curators or guardians, when service may be effected by delivery to any one of them in the manner herein prescribed;
- In the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or similar officer thereof in any manner herein prescribe.

[MC9(9)(a)(b)(c)]

In terms of subrule (3) all process must be served 'upon the person effected thereby'. Where more than one person is effected by the process, service must be effected upon all such persons. (Salisbury Municipality v Le Roux 1974(2) SA 185 (R))



ACTIVITY

List and explain the VARIOUS STATUTES and PROVINCIAL ORDINANCES that provide for the service of process, notices and documents.

7. Legislative requirements

Let's now look at other legislation that also regulates the service of process, notices and documents.

7.1 Admiralty Jurisdiction Regulation act 105 of 1983

Section 4 of the above act deals with the procedure and rules of the Admiralty Court and states the following: -

(i) Subject to the provisions of this act the provisions of the Supreme Court Act 59 of 1959 and the rules made under section 43 of that Act shall mutatis mutandis apply in relation to proceedings in terms of this Act except in so far as those rules are inconsistent with the rules referred to in subsection (2).

7.2 The Close Corporation Act 69 of 1984

In terms of section 25(1) of the above Act, every corporation shall have in the Republic a postal address and an office to which, subject to subsection (2), all communication and notices to the corporation should be addressed.

(a) Any notice order communication or other document which is in terms of this Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by certified or registered post to the registered office, or postal address, of the corporation: and

(b) Process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.

7.3 The Companies Act 61 of 1973

In terms of section 71 of the above Act, any notice, order or other document, which by this act may be required to be served upon any company, including any external company, may be served by delivering it at or sending it by registered post to the registered office or postal address of the company.

In terms of section 170(1) of the above Act, every company including every external company shall have in the republic:

(a) a postal address to which all communications and notices may be addressed: and

- (b) a registered office to which all communication and notices may be addressed and at which all process may be served.

(In terms of section 326(1), every external company shall appoint and shall at all times have one or more persons resident in the republic authorised by the company to accept on its behalf service of process and any notices required to be served on the company, notwithstanding the provisions of section 71.

7.4 The Insolvency Act 24 of 1936

Section 11(1) states that if a court sequestrates the estate of a debtor provisionally it shall simultaneously grant a rule nisi calling upon the debtor to show cause why his estate should not be sequestrated finally. The order provisionally sequestrating the debtor's estate must be served on the debtor in terms of the provisions of the rules of the Supreme Court (*Asmal Wholesalers (Pty) Ltd v Dawood* 1963 1 SA 250 (N) 255). However, where the debtor has been absent for 21 days from usual place of residence and his business if any with the republic, the court may direct that it shall be sufficient service of the rule if a copy thereof is affixed to or near the outer door of the building where the court sits and published in the Gazette, or may direct some other mode of service.

7.5 The Small Claims Court Act 61 of 1984

Section 29(b) states 'And issue the summons and hand it to the plaintiff or his authorised representative, who shall personally serve it on the defendant, or deliver it to the messenger of the court for service on the defendant.'

Rule 12 of the Rules Regulating Matters in Respect of Small Claims Courts No. R 1893 (30 August 1985) sets out the procedure for the service of a process by the sheriff. The procedure is the same as rule 9 of the Magistrate's Court Rules.

7.6 The Constitutional Court Act 200 of 1993

In terms of rule 6 of the Rules of The Constitutional Court, the provisions of rule 4 of the Uniform Rules of Court shall apply mutatis mutandis to the service of any process of the Constitutional Court.

We will now zoom in on the return of service by the sheriff.

8. Return of service



DEFINITION: A sheriff's return of service is regarded as prima facie evidence of the truth of its contents. It can be impeached, but the court requires clear and satisfactory proof that it is incorrect. In the Supreme Court a Sheriff must explain the nature and contents of the process or document that he/she is serving.

In terms of the Constitutional Court Rule 5(3) which reads as follows:

A sheriff who is entrusted with the service or execution of judicial process shall-

- (a) In writing notify the registrar and the party concerned who sued out the process that service or execution has been duly effected, stating the date and the manner of service or the result of the execution, and return that process to the registrar; or
- (b) In writing notify the party who sued out the judicial process concerned if he/she has been unable to effect service or execution, and the reasons for such inability, and return that process to the party concerned, and to keep a record of any process so returned.

Rule 5(4) of the Constitutional Court Rules requires that the sheriff specify the total amount of charges on the original document as well as each copy thereof, and the amount of each of his charges separately on the return of service.

Conclusion

Now that you have studied and done the activities in this module, you are able to apply procedures and serve process according to relevant legislation and set standards. You are also able to define the term 'serve', differentiate between various legislation that impact on this function, and you are able to discuss a sheriff's return of service.

We hope that you enjoyed studying this module and wish you success in your studies.

REFERENCES

1. Admiralty Jurisdiction Regulation Act 105 of 1983
2. Collins English dictionary, 2nd edition
3. Colonial Government v Southern Lands Ltd 12 CTR 3
4. Colonial Government v Hall (1909) 19 CTR 941
5. Gamble v Sauer (1890) 7SC323
6. Geregsbode, Meyerton v KGK (Edms) Bpk 1978 (1)
7. Jones & Buckle. *The Civil Practice of the Magistrate's Court in South Africa*. Nineth Edition. Juta. Erasmus van Loggerenberg.
8. Magistrate's Court Act 32 of 1944
9. Meyer v Du Plessis (1896) 17 NLR 157
10. Richards v Meyers 1909 TS 159
11. Salisbury Municipality v Le Roux 1974(2) SA 185 (R)
12. Solomon v Arkin Motors (Pty) Ltd 1960(4) SA 329 T 330-1
13. Supreme Court Act 59 of 1959
14. The Companies Act 61 of 1973
15. The Constitutional Court Act 200 of 1993
16. The Insoveny Act 24 of 1936
17. The Small Claims Court Act 61 of 1984