70 Taxation and tariff of fees of attorneys

(1) *(a)* The taxing master shall be competent to tax any bill of costs for services actually rendered by an attorney in his capacity as such in connection with litigious work and such bill shall be taxed subject to the provisions of subrule (5), in accordance with the provisions of the appended tariff: Provided that the taxing master shall not tax costs in instances where some other officer is empowered so to do.

(b) The provisions relating to taxation existing prior to the promulgation of this subrule shall continue to apply to any work done or to be done pursuant to a mandate accepted by a practitioner prior to such date.

(2) At the taxation of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising from such taxation.

(3) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.

(3A) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

[Subrule (3A) substituted by GN R798 of June 1997.]

(3B) *(a)* Prior to enrolling a matter for taxation, the party who has been awarded an order for costs shall, by notice as near as may be in accordance with Form 26 of the First Schedule —

(i) afford the party liable to pay costs at the time therein stated, and for a period of ten (10) days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and

(ii) require the party to whom notice is given, to deliver to the party giving the notice within ten (10) days after the expiry of the period in subparagraph (i), a written notice of opposition, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection.

(b) For the purposes of this subrule, the days from 16 December to 15 January, both inclusive, must not be counted in the time allowed for inspecting documents or notes pertaining to any item on a bill of costs or the giving of a written notice to oppose.

[Subrule (3B) inserted by GN R90 of 12 February 2010 and substituted by GN R107 of 7 February 2020.]

(3C) No taxation shall be set down in the days from 16 December to 15 January, both inclusive, except —

(a) where the period for delivery of the notice to oppose has expired, before the commencement of the period 16 December and 15 January, both dates inclusive, and no notice of intention to oppose has been delivered:

(b) where the party liable to pay the costs, has consented in writing to the taxation in his or her absence; or

(c) for the taxation of writ and post-writ bills.

[Subrule (3C) inserted by GN R107 of 7 February 2020.]

(4) The taxing master shall not proceed with the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the costs has received —

(a) due notice in terms of subrule (3B); and

(b) not less than 10 days' notice of the date, time and place of such taxation and that he or she is entitled to be present thereat: Provided that such notice shall not be necessary —

(i) if the party liable to pay the costs has consented in writing to taxation in his or her absence;

(ii) if the party liable to pay the costs failed to give notice of intention to oppose in terms of subrule (3B); or

(iii) for the taxation of writ and post-writ bills:

Provided further that, if any party fails to appear after having given notice of opposition in terms of subrule (3B)*(a)*(ii), the taxation may proceed in their absence.

[Subrule (4) substituted by GN R90 of 12 February 2010, by GN R1055 of 29 September 2017 and by GN R107 of 7 February 2020.]

(5) *(a)* The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

(b) In computing the fee to be allowed in respect of items 1, 2, 3, 6, 7 and 8 of Section A; 1, 2 and 6 of Section B and 2, 3, 4 and 7 of Section C, the taxing master shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors which he considers relevant.

(5A) *(a)* The taxing master may grant a party wasted costs occasioned by the failure of the taxing party or his or her attorney or both to appear at a taxation or by the withdrawal by the taxing party of his or her bill of costs.

(b) The taxing master may order in appropriate circumstances that the wasted costs be paid *de bonis propriis* by the attorney.

(c) In the making of an order in terms of paragraphs *(a)* or *(b)*, the taxing master shall have regard to all the appropriate facts and circumstances.

(d) Where a party or his or her attorney or both misbehave at a taxation, the taxing master may —

(i) expel the party or attorney or both from the taxation and proceed with and complete the taxation in the absence of such party or attorney or both; or

(ii) adjourn the taxation and refer it to a judge in chambers for directions with regard to the finalisation of the taxation; or

(iii) adjourn the taxation and submit a written report to a judge in chambers on the misbehaviour of the party or attorney or both with the view to obtaining directions from the judge as to whether contempt of court proceedings would be appropriate.

(e) Contempt of court proceedings as contemplated in paragraph *(d)*(iii) shall be held by a judge in chambers at his or her direction.

[Subrule (5A) inserted by GN 1723 of 30 December 1998.]

(6)*(a)* In order to diminish as far as possible the costs arising from the copying of documents to accompany the briefs of advocates, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(b) Fees may be allowed by the taxing master in his discretion as between party and party for the copying of any document which, in his view, was reasonably required for any proceedings.

(7) Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, credit agreements or other documents.

(8) Where, in the opinion of the taxing master, more than one attorney has necessarily been engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

(9) Save for the forms set out in the First Schedule to these Rules, a page shall contain at least 250 words and four Figures shall be counted as a word.

(10) The costs taxed and allowed in terms of the tariff for acts performed after the date of commencement [1] of the rules published by Government Notice R210 of 10 February 1989 shall be increased by an amount equal to 70 per cent of the total amount of such costs, for acts performed after the date of

commencement [2] of the rules published by Government Notice R2410 of 30 September 1991 shall be increased by an amount equal to 100 per cent of the total amount of such costs and for acts performed after 1 July 1993 only the Tariff of fees of attorneys in rule 70, published by Government Notice R974 of 1 June 1993, shall apply.

[Subrule (10) inserted by GN R1996 of 7 September 1984 and substituted by GN R2410 of 30 September 1991 (as corrected by GN R2479 of 18 October 1991) and by GN R974 of 1 June 1993, and amended by GN R1557 of 20 September 1996.]

TARIFF OF FEES OF ATTORNEYS

[Tariff substituted by GN R1557 of 20 September 1996, amended by GN R1755 of 5 December 2003 and GN R516 of 8 May 2009, substituted by GN R500 of 11 June 2010, by GN R759 of 11 October 2013, by GN R31 of 23 January 2015 and by GN R1055 of 29 September 2017, amended by GN R1318 of 30 November 2018, substituted by GN R858 of 7 August 2020.]

A—Consultations, Appearances, Conferences and Inspections	R c
1. Consultation with a client and witnesses to institute or to defend an action, for advice on evidence or advice on commission, for obtaining an opinion or an advocate's guidance in preparing pleadings, including exceptions, and to draft a petition* or affidavit, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
2. Consultation to note, prosecute or defend an appeal, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
3. Attendance by an attorney in court at proceedings in terms of rule 37 of these Rules, per quarter of an hour or part thereof	R328,00
4. Attendance by a candidate attorney, where necessary, to assist at a contested proceeding, per quarter of an hour or part thereof	R102,00
5. Any conference with an advocate, with or without witnesses, on pleadings, including exceptions and particulars to pleadings, applications, petitions**, affidavits and testimony and on any other matter which the taxing officer may consider necessary, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00

* *Author's note:* Proceedings by way of petition were abolished by the Petition Proceedings Replacement Act 35 of 1976, which provides that any reference in any law to the institution of application proceedings in any court by petition, shall be construed as a reference to the institution of such proceedings by notice of motion in terms of the rules of court.

** *Author's note:* See the footnote to item 1 above.

6. Any other conference which the taxing officer may consider necessary, per	

quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
7. Any inspection *in situ*, or otherwise, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
8. Attending to give or take disclosure, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
9. Inclusive fee for necessary consultations and discussions with a client, witness, other party or advocate not otherwise provided for, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
10. Appearance by an attorney in court or the performance by an attorney of any of the other functions of an advocate, in terms of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995)	The tariff under rule 69 shall apply
11. The rates of remuneration in items 1 to 9 do not include time spent travelling or waiting and the taxing officer may, in respect of time necessarily so spent, allow such additional remuneration as he or she in his or her discretion considers fair and reasonable, but not exceeding R328,00 per quarter of an hour or part thereof in the case of an attorney and R102,00 per quarter of an hour or part thereof in the case of a candidate attorney plus a reasonable amount for necessary conveyance.	
B—Drafting and Drawing	R c
1. The drawing up of a formal statement in a matrimonial matter, verifying affidavits, affidavits of service or other formal affidavits, index to brief, short brief, statements of witnesses, powers of attorney to sue or defend, as well as other formal documents and summonses, including all documents such as the prescribed forms in the First Schedule to these Rules, but not the particulars of claim in an annexure to the summons: an inclusive tariff — drawing up, checking, typing, printing, copies, delivery and filing thereof, per page of the original only	R132,00
2. The drawing up of other necessary documents, including —	
(a) instructions for an opinion, for an advocate's guidance in preparing pleadings, including further particulars and requests for same, including exceptions;	
(b) instructions to advocate in respect of all classes of pleadings;	

(c) a petition*, exception or affidavit, any notice (except a formal notice), particulars of claim or an annexure to the summons, opinion by an attorney or any other important document not otherwise provided for,	

an inclusive tariff — drawing up, checking, typing, printing, copies, delivery and filing thereof, per page of the original only	R328,00
3. Letters, telegrams and facsimiles: Inclusive tariff for drawing up, checking, typing, printing, delivery, copies, postage, posting thereof, per page	R132,00
NOTE 1 — Particulars of dispatched letters, telegrams** and facsimiles need not be specified in a bill of costs. The number of letters written must be specified, as well as the total amount charged. The opposing party, as well as the taxing officer, is entitled to inspect the papers should the correctness of the item be disputed.	
NOTE 2 — Whenever an attorney performs any of the work listed in this section, the fees set out herein in respect of such work shall apply and not any fees which would be applicable in terms of the tariff under rule 69 if an advocate had performed the work in question.	
C — Attendance and Perusal	
1. Attending the receipt, entry, perusing, considering and filing of —	
(a) any summons, petition***, affidavit, pleading, advocate's advice and drafts, report, important letter, notice or document;	
(b) any formal letter, record, stock sheets in voluntary surren-ders, judgments or any other material document not elsewhere specified;	
(c) any plan or exhibit or other material document which was necessary for the conduct of the action, per page.	R66,50
2. Sorting, arranging and paginating papers for pleadings, advice on evidence or brief on trial or appeal, per quarter of an hour or part thereof —	
(a) by an attorney	R328,00
(b) by a candidate attorney	R102,00
NOTE: Particulars of received papers need not be specified in bills of costs. The number of papers and pages received, as well as the total amount charged therefor, must be specified. The opposing party as well as the taxing officer is entitled to inspect the papers received if the correctness of the item is disputed.	
D — Miscellaneous	
1. For necessary copies, including photocopies, of any documents or papers not already provided for in this tariff, per A4 size page	R4,50
2. Attending to arrange translation and thereafter to procure same, per quarter of an hour or part thereof —	

* *Author's note:* See the footnote to item 1 above.

** *Author's note:* The word 'telegram' which previously appeared in item 3 of Part B was deleted by GN R858 in *GG* 43592 of 7 August 2020 with effect from 11 September 2020. The reason why reference to 'telegrams' is still made in Note 1 is unclear.

*** *Author's note:* See the footnote to item 1 above.

(a) by an attorney	R328,00

(b) by a candidate attorney	R102,00
3. Necessary telephone calls: The actual cost thereof, plus for every five minutes or part thereof —	
(a) by an attorney	R109,00
(b) by a candidate attorney	R34,00
4. Sending facsimile letters: The actual cost of sending the facsimile letter, in addition to the fee allowed for the drawing thereof under item B3 above.	
5. Testimony: Fair and reasonable charges and expenses which in the opinion of the taxing officer were duly incurred in the procurement of the evidence and the attendance of witnesses whose witness fees have been allowed on taxation: Provided that the preparation fees of a witness shall not be allowed without an order of the court or the consent of all interested parties.	

E—Bill of Costs
In connection with a bill of costs for services rendered by an attorney, the attorney shall be entitled to charge:
1. For drawing the bill of costs, making the necessary copies and attending settlement, 11 per cent of the attorney's fees, either as charged in the bill, if not taxed, or as allowed on taxation.
2. In addition to the fees charged under item 1, if recourse is had to taxation for arranging and attending taxation and obtaining consent to taxation, 11 per cent on the first R10 000,00 or portion thereof, 6 per cent on the next R10 000,00 or portion thereof and 3 per cent on the balance of the total amount of the bill.
3. *(a)* Whenever an attorney employs the services of another person to draft his or her bill of costs, a certificate shall accompany that bill of costs in which that attorney certifies that —
(i) the bill of costs thus drafted was properly perused by him or her and found to be correct; and
(ii) every description in such bill with reference to work, time and figures is consistent with what was necessarily done by him or her.
(b) The taxing officer may —
(i) if he or she is satisfied that one or more of the requirements referred to in item 3*(a)* has not been complied with, refuse to tax such bill;
(ii) if he or she is satisfied that fees are being charged in a party-and-party bill of costs —
(aa) for work not done;
(bb) for work for which fees are to be charged in an attorney-and-client bill of costs; or
(cc) which are excessively high,
deny the attorney the remuneration referred to in items 1 and 2 of this section, if more than 20 per cent of the number of items in the bill of costs, including expenses, or of the total amount of the bill of costs, including expenses, is taxed off.
NOTE: The minimum fees under items 1 and 2 shall be R261,50 for each item.

F—Execution	R c
1. Drafting, issue and execution of a warrant of execution and attendances in connection therewith, excluding sheriff's fees (if not taxed)	R652,50
2. Reissue	R164,00

Commentary

Form. Notice of intention to tax bill of costs, 26.

General. This rule deals with the taxation of attorneys' costs in civil matters. It has been said that the taxation of such costs 'is a regulating procedure based upon notions of fairness and practicality and designed to effect a just balance between the fruits of victory and the burden of defeat in the sphere of litigation expenses'. [3]

Costs are awarded to a party to litigation, and not his attorney, and the purpose of taxation is to determine the reasonable charges and disbursements the successful party can fairly claim from the unsuccessful party. [4]

See further the *excursus* on costs s v 'Costs in General' in Part D5 below.

Subrule (1): 'The taxing master.' All bills of costs, whether party and party or attorney and client bills, must be taxed by the duly appointed taxing master of the court. The registrar of the court is the taxing master and is appointed by the Minister in terms of s 11 of the Superior Courts Act 10 of 2013, [5] as to which see Volume 1, Part A2. This does not mean that the registrar is an official who wears two different hats appertaining to two different offices: there is one office, that of registrar, and one of the registrar's duties is to tax bills in which capacity he is referred to as the taxing master. [6]

It is the taxing master of the High Court in which the litigation took place that has jurisdiction to tax a bill of costs in respect of services rendered in connection with such litigation. [7]

'Shall be competent to tax.' The taxing master derives his authority to tax bills of costs from this subrule. [8]

It is through the process of taxation that control is exercised over costs that may be legally recovered. [9] The purpose of taxation is twofold:

> '… firstly, to fix the costs at a certain amount so that execution could be levied on the judgment and, secondly, to ensure that the party who is condemned to pay the costs does not pay excessive, and the successful litigant does not receive insufficient, costs in respect of the litigation which resulted in the order for costs.' [10]

The function of the taxing master is, therefore, to decide:

> '… whether the services have been performed, whether the charges are reasonable or

according to tariff, and whether disbursements properly allowable as between party and party have been made; his function is to determine the amount of the liability, assuming that liability exists, and the fact that he requires to be satisfied that liability exists before

he will tax does not show that there is any liability. The question of liability is one for the Court, not for the Taxing Master.' [11]

The practice and procedure as laid down by the taxing master should be followed by the assistant taxing masters, leaving the parties interested to bring the matter before the court if so desired. [12]

In *Bills of Costs (Pty) Ltd v Registrar, Cape NO* [13] the question was considered whether an unqualified person, such as a 'taxing consultant', has a right of audience before a taxing master on behalf of a party to a bill of costs which is being taxed. The Appellate Division held that taxation is an integral part of the judicial process and that, accordingly, the only persons who can appear before a taxing master in a Supreme Court are persons who are permitted to practice in such court.

The taxing master's functions are circumscribed and he does not have the jurisdiction to*, inter alia*, adjudicate defences of payment and prescription, [14] to assess the nature and extent of a plaintiff's claim and a defendant's counterclaim, [15] to determine whether an attorney acted without a mandate or exceeded it, [16] to determine whether or not an attorney and his client had agreed that the former would render his services in respect of an application for a fixed predetermined fee, [17] or to determine the validity of an agreement providing for an obligation to pay costs that are to be taxed. [18]

'Any bill of costs.' A bill of costs must be a complete bill of the whole of the fees, charges and disbursements in respect of the particular business done. The business or action to which it relates should be specified item by item. Each item must be dated and should state its subject matter precisely and not in vague and general terms. Each item must be charged specifically. [19]

In *Greenberg v Mortimer* [20] it was held that in principle there can be no partial taxation of a bill of costs: a taxing master is obliged to tax a bill properly submitted for taxation and, subject to a postponement of the whole taxation, a party presenting an imperfect bill of costs bears the risk of non-persuasion. A taxing master is not empowered by this subrule to tax the bill of costs of a foreign attorney, i e one practising outside the Republic of South Africa and not subject to the discipline of any one of the divisions of the High Court. Such a foreign bill of costs may, however, be taken into account by the taxing master in the same way as any voucher for work done in connection with a law suit. The taxing master must not take the foreign bill at face value but must scrutinize it and, depending upon the circumstances, place a greater or lesser degree of reliance upon a certificate emanating from his opposite number in the foreign court. [21]

'For services actually rendered.' Charges for work not actually done cannot be allowed on taxation on the ground that other work has been done for which a charge has not been made. [22]

'In connection with litigious work.' The term 'litigious work' (and the term 'hofwerk' used in the Afrikaans version) in this subrule includes work pertaining to courts of law in the strict sense (like the High Court and the magistrates' courts) as well as other bodies which bear the name 'court' and function as if they were courts of law applying legal principles and not administrative discretion in the settlement of disputes. [23]

All costs recoverable in terms of a judgment are covered by this subrule and a judgment creditor is not obliged to pay collection costs to his own attorney and, accordingly, is not entitled to recover such costs from the judgment debtor. [24]

'In accordance with the provisions of the appended tariff.' While rule 70(5) confers a discretion on the taxing master to depart from any provisions of the tariff, the discretion is confined to extraordinary or exceptional cases. In general, therefore, the tariff must be rigidly applied. [25] The tariff does not purport to place with scientific precision a monetary value upon every type of service rendered by an attorney: it aims at determining the remuneration of attorneys in outline and in a fairly rough, though empirical manner. [26]

There is no tariff prescribed in respect of fees as between attorney and client, but in practice the appended tariff is used as a guide in the taxation of such fees. [27] When taxing a bill between an attorney and his own client, the taxing master is empowered, and indeed in duty bound, to satisfy himself that the fees claimed relate to work actually authorized and that the fees charged are reasonable. [28] If an attorney has agreed with his client in respect of certain work a remuneration higher than that laid down in the tariff under this rule, the taxing master is empowered to enquire into the reasonableness of such an agreement. [29] A taxing master is entitled to become fully informed, either by own enquiry or by evidence placed before him, of ruling rates and current practices. [30]

Proviso: 'Where some other officer is empowered to do so.' The Master is entitled to tax a liquidator's bill for his services rendered in connection with the liquidation of a company [31] and a trustees's bill against an insolvent estate. [32]

Subrule (2): 'May call for such … documents.' The documents which taxing masters invariably peruse are instructions to the advocate, documents discovered, statements of witnesses and the advocate's advice on evidence in trial actions. As the taxing master is, in a sense, a court, he is bound to guard zealously the interests of litigants, and to scrutinize carefully each item in a bill, and in order to give just and equitable decisions it is his duty to call for books, documents, papers or accounts. See further the notes to rule 70(3B)*(a)* below.

Subrule (3): General. This subrule follows the wording of the former Cape rule 47(4) which was thoroughly examined in a number of cases. [33] The purpose of the subrule has been stated to be the following: [34]

> 'It is a Rule which determines the taxation of party and party costs. It not only authorizes but requires that its injunction shall be applied with a specific object. The object is that the party to whom costs are awarded is afforded "full indemnity" for every expenditure "reasonably incurred by him in relation to his claim or defence". It is expressly added that the object is also to ensure that "all such costs" shall be borne by the party against whom the order has been awarded. In order to achieve those objects the Taxing Master must allow

> all costs, charges and expenses which appear to him to have been "necessary or proper for the attainment of justice" in the case of a plaintiff (or the defending of his rights by any other party). The Rule accordingly requires that an expenditure of a type which it was reasonable to incur must be allowed. The extent of allowance must be on the level of what is "necessary or proper" in order to have his case duly presented. It is not for a Court charged with the merits or the determination of liability for costs to compensate for a perceived inadequacy in the operation of the Rule by awarding costs on an attorney and client scale so that a "full indemnity" of more comprehensive scope is achieved than the one which the Rule-maker envisaged.'

In *Trollip v Taxing Mistress, High Court* [35] the full court stated [36] that the intention of the subrule 'is to ensure that the ultimate winner of a suit should not have the fruits of victory reduced by having to pay too high a proportion of his or her costs by way of an attorney and client bill'.

There is nothing in the subrule which draws any distinction between application proceedings and other proceedings. [37] Though, as a general rule, fees for settling affidavits by counsel and charges for consultation with counsel on an application are not allowed as between party and party unless the application involves complicated factual or difficult legal issues, this does not mean that such charges can *only* be allowed where the application is complicated and involves difficult legal issues. The proper test is that stated in rule 70(3): having regard to the issues of fact or law involved in the case, was it reasonable and not over-cautious for the attorney to brief counsel to settle affidavits filed on behalf of his client? [38] See further the notes to rule 69(5) s v 'Affidavits' and 'Applications' above.

The taxing master is, in terms of the subrule, afforded a discretion. [39] While it is permissible, and indeed often useful, for the court in its judgment to express its views on costs-related

issues for the assistance and guidance of the taxing master, judges should not usurp the taxing master's role and functions. [40] The court should, therefore, not make special orders as to costs which have the effect of binding the taxing master unnecessarily. [41]

In *Trollip v Taxing Mistress, High Court* [42] the full court held [43] that a taxing master is required to approach the task of taxing a bill of costs with an open mind.

'A full indemnity.' Subject to the specified exceptions, this subrule is intended to give to the successful party a full, not a partial, indemnity for all costs reasonably incurred in relation to any legal proceedings. [44] However, owing to the operation of taxation such an award of costs is seldom a complete indemnity; but that does not affect the principle involved. [45]

'For all costs reasonably incurred.' The touchstone is for expenditure to be allowed which has been reasonably and properly incurred. [46] It is the duty of the taxing master to ensure that fees are reasonable and that expenditure claimed were reasonably incurred. [47]

Costs may be reasonably and properly incurred within the meaning of the rule, even though they may not have been strictly necessary at the time they were incurred, or at all. [48] Depending on the circumstances, costs may be reasonably and properly incurred

before the institution of legal proceedings. [49] If counsel's fee is a reasonable one, it should be allowed in full without deduction. [50]

If there is a dispute as to whether the costs of medical experts should be allowed [51] the taxing master has to apply his mind and exercise his discretion to determine whether these costs must be allowed. [52]

'In relation to his claim.' The plaintiff is entitled to a full indemnity for every expenditure reasonably incurred in relation to his claim, but he is not entitled to a special order as to costs, such as an order of costs on an attorney and client scale, to compensate for any alleged or perceived inadequacy in the operation of this rule and the tariff appended thereto. [53] In addition, owing to the necessary operation of taxation, an award of costs is seldom a complete indemnity. [54]

'Or defence.' While costs are awarded to a successful defendant in order to indemnify him for the expense to which he has been put through having been unjustly compelled to defend litigation, the award is seldom a complete indemnity owing to the necessary operation of taxation. [55]

'As appear to him.' The discretion vested in the taxing master is to allow costs, charges and expenses *as appear to him* to have been necessary or proper; not those which may objectively attain such qualities. His opinion must relate to all costs reasonably incurred by the litigant, which imports a value judgment as to what is reasonable. [56] A court should not usurp the taxing master's role and functions. See further, in this regard, the notes s v 'General' above.

'To have been necessary or proper.' 'Reasonable costs' have been equated with such costs as are 'necessary *or* proper for the attainment of justice or for defending the rights of any party'. [57] Whether or not a particular item of expenditure is an allowable expense depends upon the circumstances of each particular case — thus the question whether or not the costs of obtaining a copy of evidence during a trial is a necessary expense and therefore recoverable on a party and party basis must be resolved in the light of the circumstances of each particular case. [58] One of the functions of the taxing master is to decide whether the services for which fees have been charged and a bill of costs prepared have actually been rendered. [59] The taxing master is entitled to demand proof that the services for which payment is demanded have actually been rendered. [60] Should the taxing master fail to do this, the successful respondents may seek to obtain payment from the unsuccessful applicant in respect of fees of attorney and counsel where services were not actually rendered to those respondents by attorney or counsel. [61]

In *Trollip v Taxing Mistress, High Court* [62] the full court stated: [63]

> '[20] While a taxing master may not ignore evidence that may show that work that has been charged for has, in fact, not been done, this does not mean that there is a duty upon practitioners to 'prove their claims', as it were. The legal profession is a 'distinguished and venerable profession' and its members are officers of the court. As a result, 'absolute personal integrity and scrupulous honesty' are expected of them. It follows that a taxing officer is entitled to take counsel's fee list at face value as constituting a record of the work that has been done. The honesty and professional ethics of counsel ought not to be lightly

questioned.'

RS 9, 2019, D1-784A

As a taxing master must have a full picture before him, in order to determine just remuneration for work done, he may have to determine disputes of fact. [64] In *Trollip v Taxing Mistress, High Court* [65] the full court in this regard referred [66] to what was said in *Brener NO v Sonnenberg, Murphy, Leo Burnett (Pty) Ltd (formerly D'Arcy Masins Benton & Bowless SA (Pty) Ltd)* [67] of this function:

> 'In the light of this discussion of the authorities, I am of the opinion that the Taxing Master has the power, and in some instances (rare though they may be) the duty, to hear oral evidence on disputed questions of fact arising out of the taxation before him. It follows, in my view, that in the occasional instance in which the Taxing Master hears oral evidence, it must be taken to be his duty to keep a record of that evidence, and of his findings of fact based upon the evidence. Therefore, when the Taxing Master is required in terms of Rule 48(1) to state a case in respect of a matter in which he has heard evidence, he will not be expected to rely entirely on his memory, and the record kept by him will assist him in drawing up the stated case.'

'Incurred or increased through over-caution.' What constitutes over-caution depends upon the circumstances of each particular case. [68] Thus, it has been held that a plaintiff's attorney was not entitled, as between party and party, to embark upon investigations as the result of an allegation which had not been raised by the defendant in the pleadings — his proper course was to await an amendment in the proper form. [69] On the other hand, it has been held that a party and his attorney are entitled to investigate, with the least possible delay, the circumstances relating to the events giving rise to a claim and the facts and evidence which might be available to support the claim. [70]

'By payment of a special fee to an advocate.' This subrule precludes the allowance, in a party and party bill, of expenses incurred by payment of a special fee to an advocate, such as one made on the ground that he was required to appear in a division of the High Court other than that in which he normally practises. [71]

'By other unusual expenses.' The costs incurred in obtaining counsel where there had been an unjustified withdrawal by counsel who had initially accepted the brief are 'unusual expenses' within the meaning of this subrule. [72]

Subrule (3A): 'Value-added tax.' This subrule is an empowering provision. It enables the party concerned to claim reimbursement of the items referred to but obliges the taxing master to allow or disallow them depending on whether they are expenses as contemplated in the subrule. [73]

RS 12, 2020, D1-785

Whether VAT is chargeable depends on the application of the relevant statutory provisions, properly construed, to the facts. [74] If VAT has been included in the bill of costs, at the choice of the party concerned, it is the function of the taxing master to decide whether such inclusion is proper or not. [75] In this regard the taxing master does not have a discretion. [76] Thus, the winner has to satisfy the taxing master that the items in the bill of costs are costs in the true sense, i e expenses which actually leave the

winner out of pocket. [77]

Subrule (3B): General. Failure by the party who has been awarded an order for costs to satisfy the taxing master that due notice in terms of this subrule was given to the party liable to pay costs will, save in the exceptional circumstances provided for in subrule (4), effectively bar the taxing master from proceeding to the taxation of the bill of costs concerned. See further subrule (4), and the notes thereto below.

Subrule (3B)*(a)*(ii): 'Within ten (10) days … a written notice of opposition.' The taxing master has no power to condone the late filing of the notice of opposition. [78]

Subrule (4): 'The party liable to pay.' Notice of taxation must be given to the party who is primarily liable therefor. [79]

Subrule (4)*(a)*: 'Received due notice.' The provision that a taxing master shall not tax a bill unless he is satisfied that the party liable to pay the same has received due notice as required by this subrule is imperative. [80] Substantial compliance ('wesentlik stiptelike nakoming') with the provisions of the subrule is sufficient. [81]

Notice of taxation may be given at a chosen *domicilium citandi et executandi*. [82]

If a party deliberately evades notice of taxation, the court can assume that the judgment creditor has complied with the subrule, i e the court is entitled to apply the doctrine of fictional fulfilment. [83]

The provisions as to notice are for the protection of the party who has to pay the costs, and may consequently be waived by him, but such waiver, as in every case of waiver, must be clear before the court will accept that there has been a waiver. Appearance at the taxation without taking objection to the lack of notice amounts to waiver of notice. [84] Waiver can also arise where instead of applying for a review on the ground of lack of notice, the aggrieved party seeks a review of taxation in regard to the items allowed against him by the taxing master. [85]

If a third party has agreed, prior to taxation, to pay certain taxed costs between litigants there is no obligation in law that before such costs can be recovered from such party notice

of taxation must be given him, nor is there any procedure for taxing such costs against such party. [86] Where, however, a third party has guaranteed payment of costs incurred *and to be incurred* by a litigant with his attorney, and action was taken against him on a taxed bill of costs (after notice to the litigant), the court on objection raised by the guarantor ordered the bill to be retaxed after notice to him. [87]

If a third party is joined by service upon him of a third party notice in terms of rule 13(5) and becomes liable for costs jointly and severally, he is entitled to receive notice of taxation and be present at the taxation. [88]

Subrule (4)*(b)*(i): 'Has consented … to taxation in his or her absence.' If an attorney taxes his client's attorney and client bill in his client's absence in terms of this subrule, such taxation, though perfectly valid and proper as against the attorney's own client, is not in law a step or proceeding against a third party. [89]

Subrule (4)*(b)*(ii): 'Failed to give notice … to oppose in terms of subrule (3B).' See the notes to subrule (3B) above.

Subrule (4)*(b)*(iii): 'For the taxation of writ and post-writ bills.' No notice is necessary for the taxation of writ and post-writ bills as in these cases the tariff of fees is fixed. See items A5 and D7 of the appended Tariff of Fees of Attorneys above.

Subrule (5)*(a)*: 'To depart from any of the provisions of this tariff.' This subrule explicitly con-fers a discretion on the taxing master to depart from any provisions of the tariff where strict adherence to such provisions would be inequitable. [90] 'Tariff' in the subrule does not refer merely to the tariff's actual figures but also to the items themselves. In other words, the taxing master is entitled in extraordinary circumstances to depart from the provisions of the tariff by allowing an increased fee for an item specified in the tariff, or for a matter not specified in the tariff at all. [91]

'In extraordinary or exceptional cases.' The discretion conferred upon the taxing master to depart from the provisions of the tariff is confined to extraordinary or exceptional cases. [92]

The taxing master's discretion under this subrule permits him to allow, in exceptional circumstances, either a greater or a lesser fee than that prescribed in the tariff. [93]

The mere fact that a case has many factual issues which will cause it to be much longer than the average case does not in itself make it an extraordinary or exceptional case so as to bring every item of work within the ambit of this subrule. [94]

Although the tariff in rule 70 is intended for the taxation of party and party costs, the taxing master must use it as a guide in the taxation of (i) penal costs to be paid by a defeated adversary ('costs on attorney and client scale' [95]); and (ii) those due to a client's own attorney

('attorney and own client costs'). [96] The taxing master has a discretion, when taxing *any* bill of costs, to depart from the tariff on the basis of what is fair and reasonable, and in particular with reference to the express provisions of rule 70(5). [97]

If an attorney and that attorney's client have agreed on fees and there is a complaint that the fees agreed are not reasonable, the taxing master must exercise his discretion to determine the reasonableness of the fees, which determination may (i) be identical to the tariff in rule 70; or (ii) be different, and at a higher rate. [98]

In the absence of an agreement between an attorney and that attorney's client about fees to be paid by the client to the attorney for services rendered, the taxing master must exercise his discretion to determine reasonable fees, which may (i) be identical to the tariff in rule 70; or (ii) be different, and at a higher rate. [99]

Departures from the tariff must be informed by principle, rather than amount to a standardized award of a multiple of the tariff. The rote doubling or tripling of the tariff to arrive at the 'attorney and client' and 'attorney and own client' rates does not amount to a proper exercise of the taxing master's discretion and will be liable to be set aside on review. [100]

The following statement [101] of the various principles of taxation as between attorney and client which are applicable in the following cases, has often been cited with approval: [102]

> '(1) Where the costs are payable by the client to his or her attorney; [103] or where the costs are payable out of a fund belonging entirely to the client.
>
> (2) Where the costs are payable out of a general or common fund.
>
> (3) Where the costs are payable out of a fund which belongs to other parties and in which the party has no interest, or where the costs are payable by one party to the other.
>
> (4) Where the attorney and client costs are to be paid by the opposite party—*Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 608. [104]
>
> The taxation in the case of (1) is more generous than in the case of (2) and (3), while in the case of (2) the taxation is not so generous as in the case of (1). The taxation in the case of (3) is the strictest, and, in effect, gives little more than a taxation as between party and party, except that any necessary letters and attendance on the client are allowed.'

In *Law Society of the Cape of Good Hope v Windvogel* [105] it was stressed that one is not here dealing with different kinds of attorney and client *orders*, but different principles for the taxation of attorney and client costs. A court will not normally direct the precise method of taxation, but will generally order costs to be taxed on a party and party or an attorney and client scale. [106] If the court orders costs to be paid on the attorney and client scale, the taxing master will have regard to the different categories of attorney and client costs and will apply what he considers to be the correct scale, taking into account whatever other features are relevant. [107] The full court of the Cape Provincial Division depreciated the practice of ordering costs to be paid by the opposite party as between attorney and own client, [108] concluding that 'the attempt to elevate a direction that costs be paid as between attorney and own client to a different order from that of attorney and client cannot achieve what it purports to do.' [109]

Subrule (6)*(a)*: 'The copying of documents to accompany the briefs of advocates.' An advocate may be briefed with all necessary documents to enable him to draw a pleading. [110]

Roos [111] holds that for the purpose of drawing pleadings, attorneys should hand to the advocate the original documents in their possession as the costs of copying may be disallowed if the action is not proceeded with. However, the submission of Jacobs & Ehlers [112] that copies of documents can be made when the first brief is delivered to counsel seems to be preferable.

In *Bramley v Leonard* [113] it was held that copies of all correspondence and documents which are placed before the advocate, and which are relevant to the history of the case, are properly chargeable in a party and party bill of costs.

Subrule (6)*(b)*: 'Copying of any document . . . reasonably required for any proceedings.' Before a fee for copying may properly be allowed in a party and party bill, 'the taxing master need not be of opinion that the costs under examination by him are *necessary*—still less absolutely necessary: if they are, though not strictly speaking

necessary, yet *proper* in the sense of being reasonably incurred, and are not incurred or increased through over-caution, negligence or mistake, they should be allowed'. [114]

If the records of previous proceedings (whether criminal or civil or enquiries before the Master in liquidations, insolvencies, etc) contain matter which is reasonably likely to be of assistance to counsel for the purpose of conducting the case, the costs of copying these records should be allowed. [115]

On the question whether or not the costs of obtaining a copy of evidence during a trial is a necessary expense and therefore recoverable on a party and party basis, see the notes to subrule (3) s v 'To have been necessary or proper' above.

Subrule (7): 'Or other documents.' These include such documents as municipal regulations and voters' lists which can be obtained in printed form. [116]

Subrule (8): 'In the opinion of the taxing master.' The decision as to whether a litigant is entitled in a particular case to recover the costs of more than one attorney is pre-eminently (at least in the first instance) one for the taxing master. [117] This would include a decision as to the travelling costs of the attorney who does not reside at the seat of the court. [118]

'More than one attorney has necessarily been engaged.' Necessity, in the opinion of the taxing master, for the employment of more than one attorney, is an essential requirement which must be satisfied before the provisions of this subrule can be invoked. [119] The opposite party is not to be saddled with unnecessary costs; and costs are not to be duplicated. [120]

If more than one attorney is necessarily engaged, each such attorney may draw up and have taxed a bill of costs, and may charge, in addition to the fees allowed or included in such bill, a fee for drawing the bill and a fee for having it taxed under item G1 and G2 of the appended Tariff of Fees of Attorneys. [121] The requirements of subrule (3) apply to both bills. [122]

If a litigant does not reside at the seat of the court where the litigation is being conducted, he will be entitled to enlist the services of one attorney at the place where he resides (or carries on business) and the services of another at the seat of the court. If he is successful and is awarded the costs of the litigation, he will be entitled to recover from the unsuccessful party the reasonable costs incurred by both attorneys. [123] Fees for attendance in court at a trial are usually allowed only for one set of attorneys acting for a party, that is either for the attorney at the place where the litigant resides (or carries on business) or for the attorney practising at the seat of the court. [124]

If a litigant elects not to make use of the services of an attorney at the place where he resides (or carries on business), he will not be entitled to recover the costs of more than one attorney. [125]

In *Schoeman v Schoeman* [126] it was held that in the choice of a local attorney, a litigant is not necessarily restricted to an attorney practising in the town where he lives

or carries on business, and that much would depend on the circumstances of the case and a realistic and common-sense approach should be adopted. Thus, for example, a litigant should not be be restricted in his choice of attorney by the arbitrary nature of municipal boundaries: if an attorney lives conveniently near to a litigant or if the litigant lives conveniently near to the attorney's offices then the litigant cannot be denied the right to consult that attorney merely because a municipal boundary separates the two places. [127] Similarly, a company with branches countrywide is entitled to instruct attorneys where its registered head office is situated even if the cause of action had arisen at one of its branches, its principal place of business within the area of jurisdiction of another division of the High Court, and the litigation was conducted in that court. [128] In this regard a distinction must be drawn between the case where the work performed by the local attorney is to be accepted as having been necessarily performed and the case where, by reason of the fact that the litigant could as well have given instructions direct to the attorney at the seat of the court, the work done by the local attorney cannot be classed as work necessarily done. It is in applying this distinction that a realistic and common-sense approach must be applied and each case decided on its own facts. [129] Thus, it was held in *Zeelie v General Accident Insurance Co Ltd* [130] that where a litigant who resides in one town but is employed in another which is the seat of the court can with equal facility instruct an attorney in either town, he should instruct an attorney where he is employed.

Subrule (9): 'A page shall contain at least 250 words and four Figures shall be counted as a word.' The words are peremptory and are thus not merely a guide. The subrule has been worded in this manner to prevent abuse. [131] It is considered [132] that the aforesaid approach results in a logical and pragmatic solution where a page contains less than 250 words.

Subrule (10): 'The costs taxed and allowed … shall be increased.' If a tariff is amended (i) the amended tariff applies only to work done after the effective date of the amendment; and (ii) that tariff applies which was in force when the work was done, irrespective of when the bill is taxed. [133]

TARIFF OF FEES

General. The Tariff of Fees introduced by GN R1557 of 20 September 1996 with effect from 21 October 1996 (and subsequently amended from time to time) differs in principle from previous Tariffs. In the past, an attorney was allowed a fee for a particular kind of word done, and often the fee ranged from a low to a high, the actual fee allowed on taxation ultimately being in the discretion of the taxing master. Thus, for example, for taking instructions to institute or defend any proceeding, the Tariff allowed a fee ranging from R25,00 to R250,00. The present tariff is time-based, i e an attorney or candidate attorney is allowed a fee for the time spent on performing a particular task. The basic unit is R328.00 per quarter of an hour or part thereof for an attorney (i e R1312.00 per hour), and R102.00 per quarter of an hour or part thereof for a candidate attorney (i e R408.00 per hour). For example, in the present tariff an attorney is allowed a fee in accordance with the prescribed time rate for consultation with a client to institute or defend an action.

A — Consultations, Appearances, Conference and Inspections

Item 1: 'Consultation … to institute or to defend an action.' Since the fee is based on the time spent in performing a particular task, it is submitted that the fee does not include, as was held under the previous tariff, [134] a charge for the acceptance of the responsibility of the litigation.

'**For obtaining an opinion or an advocate's guidance.'** This item must be read in conjunction with rules 70(3) and (5), and the tariff consequently only provides for counsel's opinion in cases where it is necessary or proper to obtain such an opinion as an 'ordinary incident' in the litigation or where it is justified in extraordinary or exceptional circumstances. The general rule is that such an opinion is not an ordinary incident in litigation but in each case the facts should be examined to determine whether the attainment of justice requires that an exception be permit.

Item 2: 'Consultation to note, prosecute or defend an appeal.' It is not clear whether this would include a fee for consultation in regard to opposing an application for leave to appeal to the Supreme Court of Appeal. [135]

When the tariff speaks of 'an appeal', it refers to a form of procedure which is known to, and recognized by the law of procedure; the item does not refer to a so-called 'appeal' which has no recognized existence in law. [136]

Item 4: 'Attendance by a candidate attorney.' A candidate attorney need not be actually physically present in court during the whole of the day; 'attendance' here means if the candidate attorney is busy and concerned with the conduct of the case on behalf of the attorney. [137]

There seems to be a *lacuna* in the tariff, no provision being made for 'attendance by an attorney'. [138]

Item 5: 'Any conference with an advocate … which the taxing officer may consider necessary.' There is no limitation on the number of consultations under this item. It is for the taxing master, in the light of the other items allowed, to determine the number of consultations which, in the circumstances, are to be treated as reasonably necessary. [139]

Item 6: 'Any other conference.' It was held under the previous tariff that a clear distinction was drawn between consultations which an attorney has face to face, or in private, with his client or someone else, and discussions which he has with his client or someone else by telephone. [140] It was held that the distinction drawn in the tariff between formal telephone calls and other telephone calls confirmed that in the latter are included telephone conversations which, had the persons concerned been together, would be regarded as consultations. [141] In the present tariff no distinction is drawn between different kinds of telephone calls — the tariff only knows the 'necessary telephone calls' of item 3 of Part D. A fee for a telephonic conference may, therefore, it is submitted, be recovered under either this item or under item 3 of Part D, but not under both. Recovery under item 3 of Part D has the advantage that the actual cost of the telephone call can also be recovered.

A consultation on an offer of settlement is taxable as between party and party. [142] A consultation on a proposed consent paper in a divorce action is probably taxable as

between party and party. [143] Similarly, a consultation with a client when an affidavit is signed.

Item 11: General. In regard to the fees allowable to attorneys under this item in respect of time spent in waiting in court for a matter to be heard, once the taxing master is satisfied that time was necessarily spent in waiting, he must apply his mind to the *quantum* of the fee to be allowed therefor, which necessarily involves also a consideration of the duration of the period necessarily spent waiting. [144]

A wasted day caused by a matter being crowded out because an earlier case has exceeded its allotted time is not a day of 'waiting' within this item. The attorneys are, however, entitled to remuneration on the common-law basis of costs wasted, and the costs of the wasted day should be costs in the cause.

B — Drafting and Drawing

General. In this part of the Tariff, the fee allowed is per page of documents drafted or drawn. The fee allowed is inclusive of drawing up, checking, typing, printing, delivery and filing.

Item 2*(a)*: 'Instructions for an opinion.' See the notes under Part A of the Tariff s v 'For obtaining an opinion or an advocate's guidance' above.

'Including further particulars.' It has been held that the drafting by an attorney of a request for further particulars and a plea which are subsequently settled by counsel may be regarded as the drafting of instructions for counsel's guidance. [145]

C — Attendance and Perusal

Item 1: 'Perusing.' The act of perusing or considering a document or letter should be held to mean the application of a trained legal mind to the content of the document in question. [146]

If documents had been perused by an attorney in one case he cannot charge for perusing the same documents used in a subsequent case as if they were *res nova*, although he may in certain circumstances be allowed a fee for repetition and checking. [147]

Where a perusal fee is permitted, a copying fee should logically be allowed under rule 70(6)*(b)*. [148]

Item 1*(a)*: 'Important letter, notice or document.' This subparagraph deals with 'important' documents, while the succeeding paragraphs (i e items 1*(b)* and *(c)*) deal with 'material' documents. In the previous Tariff, perusal of the former justified a higher fee than perusal of the latter and the distinction between the two kinds of document was perhaps more important than under the present Tariff. An 'important' letter, notice or document is a document such as, for instance, a cheque, promissory note, mortgage bond, deed of sale, written agreement and any other document, not merely of evidential value, but on which the cause of action or the defence is directly based. [149] 'Material' documents are those which further either party's case in the sense that they have evidential or probative value. [150]

Item 1*(b)*: 'Record.' The word 'record' in this item does not only mean commercial records such as inventories; it also includes court records, records of commissions of enquiry, and records of enquiries under the Insolvency Act 24 of 1936. [151]

Item 2: General. On the face of it, this item applies only to appeals, but taxing masters have applied the provisions of the equivalent item in the previous tariff (item 4 of Part B) to voluminous motion proceedings. It was held in *Monja v Pretoria City Council* [152] that the item is not restricted to the papers of the court and counsel and that it also covers a charge by the attorney for 'binding and paginating own set of pleadings'. It was queried in the same case whether the binding of such pleadings amounts to 'sorting out' or 'paginating'.

D — Miscellaneous

Item 3: 'Necessary telephone calls.' See the notes to item 6 of Part A s v 'Any other conference' above.

Item 5: 'Testimony.' The costs of collecting evidence do not per se fall into the party and party bill of costs, [153] but in appropriate circumstances and where 'reasonably incurred' such

costs can be a proper party and party charge. [154] The expenses of witnesses appearing before an attorney to take their statement are attorney and client costs. [155] The attendance by an attorney on a witness to take his statement at any place other than at the witness' office may be disallowed unless such attendance is essential, because the witness is ill or otherwise unable to travel for the purpose of giving his statement. If a witness is in another town or nearer another attorney who can take his statement, at less expense, the other attorney must be employed to do so, and his costs of doing so will be allowed. [156]

The costs incurred in obtaining a document such as a surveyor's plan of a locality are not costs which can be allowed under this item as being expenses incurred in procuring the evidence of a witness, unless a special order of court is obtained in regard thereto. [157]

While an order of court or the consent of all interested parties is required before the qualifying expenses [158] of a witness shall be allowed, the determination of the *quantum* of such fees is committed to the discretion of the taxing master. [159] However, in the light of subrule (3) of this rule, the qualifying expenses of an expert witness must consist of costs and disbursements before they can be allowed as qualifying fees. [160] Consultations with experts by counsel may, or may not, fall within the ambit of the qualifying process. Consultations with counsel by an expert to go through the latter's report or statement are excluded; consultations with experts to inform them of the issues and matters on which they would be required to testify, and to limit those issues to a minimum, do fall within the ambit of the qualifying process. [161] The court must be requested to make a special order allowing such expenses to be taxed as between party and party, [162] failing which the party calling such witness will have to bear these costs himself. [163] The request that qualifying fees be allowed need not necessarily be made

before judgment: it may be made immediately upon judgment being given or 'very soon' thereafter. [164]

If the expert witness is not called (for instance, because the point upon which his evidence is required is admitted), the court is entitled, where the payment of qualifying fees was reasonably necessary in the circumstances, to grant an order allowing the qualifying fees of an expert witness. [165] If the case is settled and the agreement states that one party is to pay the other party's taxed costs, these do not include the qualifying expenses of a witness whom

the court has not heard. [166] It is, of course, always open to a party who negotiates a settlement to stipulate for the payment of the qualifying expenses of expert witnesses. [167]

E — Bill of Costs

Item 2: 'Arranging and attending taxation' includes making an appointment to tax, notice of taxation, obtaining the trustee's consent in insolvency matters, and no separate charges for such work are permissible. [168]

1 10 March 1989.

2 1 November 1991.

3 *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 467D.

4 *Costello v Registrar of the High Court, Salisbury* 1974 (3) SA 289 (R) 290.

5 See *Venter v Venter* 1970 (3) SA 257 (A) at 261E, a case dealing with s 34 of the now repealed Supreme Court Act 59 of 1959.

6 *National Automobile and Allied Workers' Union v Brown, Hurly & Miller* 1990 (2) SA 926 (E) at 931D.

7 *Grindlays International Finance (Rhodesia) Ltd v Ballam* 1985 (2) SA 636 (W) at 646B.

8 *Grindlays International Finance (Rhodesia) Ltd v Ballam* 1985 (2) SA 636 (W) at 645E; *Henpet Shades CC v Garzouzie* 1998 (3) SA 929 (O) at 934A.

9 *Mediterranean Shipping Co Ltd v Speedwell Shipping Co Ltd* 1989 (1) SA 164 (D) at 170A. Moreover, interest on a costs order can only be levied on taxed costs, i e interest is only payable from the date of the taxing master's *allocatur (Administrateur, Transvaal v J D van Niekerk en Genote BK* 1995 (2) SA 241 (A)).

10 *Mouton v Martine* 1968 (4) SA 738 (T) at 742B; *Thusi v Minister of Home Affairs and Another and 71 Other Cases* 2011 (2) SA 561 (KZP) at 612D–E.

11 *Martens v Rand Share and Broking Finance Corporation (Pty) Ltd* 1939 WLD 159 at 165, cited with approval in *Composting Engineering (Pty) Ltd v The Taxing Master* 1985 (3) SA 249 (C) at 250I.

12 See *Tretheway v Reinhold* 1920 TPD 13; *Wellworths Bazaars Ltd v Chandlers Ltd* 1947 (4) SA 453 (T); *Hattingh v Ngake* 1966 (1) SA 64 (O).

13 1979 (3) SA 925 (A). See also *Nedperm Bank Ltd v Desbie (Pty) Ltd* 1995 (2) SA 711 (W).

14 *Lubbe v Bosman* 1938 CPD 211.

15 *NUS South Africa (Pty) Ltd v R&E Holdings (Pty) Ltd* 2000 (3) SA 522 (E).

16 *Botha v Themistocleous* 1966 (1) SA 107 (T) at 111E–F.

17 *Composting Engineering (Pty) Ltd v The Taxing Master* 1985 (3) SA 249 (C) at 250G–H.

18 *Berman & Fialkov v Lumb* 2003 (2) SA 674 (C) at 682E–G.

19 *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 119H.

20 1979 (4) SA 642 (T) at 644.

21 *Grindlays International Finance (Rhodesia) Ltd v Ballam* 1985 (2) SA 636 (W) at 648E–G.

22 *Spira v Weber* 1912 TPD 353; *Duvos (Pty) Ltd v Newcastle Town Council* 1965 (4) SA 553 (N); *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 119F; *Eichoff v Eichoff* 1980 (4) SA 389 (SWA) at 392F. See also *Masango v Road Accident Fund* 2016 (6) SA 509 (GJ) at 515E–J.

23 See *In re Isaacs v Bloch* 1990 (4) SA 597 (T) at 599G–600D; *National Automobile and Allied Workers' Union v Brown, Hurly & Miller* 1990 (2) SA 926 (E). Both these cases deal with the taxation of attorneys' bills of costs in connection with matters within the jurisdiction of the former industrial court.

24 *Blaikie-Johnstone v D Nell Developments (Pty) Ltd* 1978 (4) SA 883 (N); *Sentraal Westelike Koöperatiewe Maatskappy Bpk v Smith* 1980 (2) SA 371 (O); *Noord Transvaalse Koöperasie Bpk v Nel* 1982 (3) SA 514 (T).

25 *Loots v Loots* 1974 (1) SA 431 (E) at 434C. See also *Greenblatt v Wireohms South Africa (Pty) Ltd* 1960 (2) SA 527 (C) at 529H; *Thornycroft Cartage Co v Beier & Co (Pty) Ltd* 1962 (3) SA 26 (N) at 28D; *Costello v Registrar of the High Court, Salisbury* 1974 (3) SA 289 (R) at 292D.

26 *Raymond v Raymond* 1974 (3) SA 872 (T) at 877A.

27 *Malan v Meyer* 1974 (1) SA 476 (T).

28 *Malcolm Lyons & Munro v Abro* 1991 (3) SA 464 (W) at 469E. See also *Cambridge Plan AG v Cambridge Diet (Pty) Ltd* 1990 (2) SA 574 (T); *Muller v The Master and Another* 1992 (4) SA 277 (T); *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T).

29 *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T) at 258C–H.

30 *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T) at 258J–259C.

31 Section 384 (1) of the (now repealed) Companies Act 61 of 1973, which continues to apply until a date to be determined by the Minister by virtue of item 9 of Schedule 5 of the Companies Act 71 of 2008.

32 Section 63(1) of the Insolvency Act 24 of 1936. See also *Rennie NO v The Master* 1980 (2) SA 600 (C).

33 See *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 792H–793A; and see *City of Cape Town v Arun Property Development (Pty) Ltd* 2009 (5) SA 227 (C) at 231D–H; *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 297A–D.

34 *Bowman NO v Avraamides* 1991 (1) SA 92 (W) at 95B–E; and see *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP).

35 2018 (6) SA 292 (ECG).

36 At 297E.

37 *Baars v Near East Rand Darts Association* 1993 (3) SA 171 (W) at 173F; *Henpet Shades CC v Garzouzie* 1998 (3) SA 929 (O) at 936D–H.

38 *Solsons Properties (Pty) Ltd v Yorkshire Clothing Industries (Pty) Ltd* 1972 (2) SA 203 (D) at 204F–205B; *Baars v Near East Rand Darts Association* 1993 (3) SA 171 (W) at 173G–174B; *Henpet Shades CC v Garzouzie* 1998 (3) SA 929 (O) at 936H. See also *Adamant Laboratories (Pty) Ltd v General Electric Co* 1964 (3) SA 363 (T) at 367E–H; *Miller v Hosiosky* 1973 (1) SA 113 (W) at 116E–F.

39 *Wellworths Bazaars Ltd v Chandlers Ltd* 1947 (4) SA 453 (T) at 457; *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 793D; *Meer v Taxing Master* 1967 (4) SA 652 (D) at 655G; *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 113E; *Gqukani v Eastern Cape Administration Board* 1981 (3) SA 928 (E) at 930G; *Van Wyk v Louw* 1987 (1) SA 576 (T) at 579D; *Bowman NO v Avraamides* 1991 (1) SA 92 (W) at 95B; *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 468C–G; *Henpet Shades CC v Garzouzie* 1998 (3) SA 929 (O) at 934D–935A; *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 298D–I.

40 *Hing v Road Accident Fund* 2014 (3) SA 350 (WCC) at 380C–G.

41 *Page v Rondalia Assurance Corporation of SA Ltd* 1974 (3) SA 66 (E) at 70H.

42 2018 (6) SA 292 (ECG).

43 At 299A.

44 *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 793B; *Meer v Taxing Master* 1967 (4) SA 652 (D) at 655; *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 467E; *Hameva v Minister of Home Affairs, Namibia* 1997 (2) SA 756 (NmSC) at 760E; *City of Cape Town v Arun Property Development (Pty) Ltd* 2009 (5) SA 227 (C) at 231E; *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 297C–F.

45 *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488; *Groenewald v Selford Motors (Edms) Bpk* 1971 (3) SA 677 (C) at 683E; *Bowman NO v Avraamides* 1991 (1) SA 92 (W) at 94G; *Theron, Van der Poel, Brink, Roos v Simonsig Landgoed* 1994 (4) SA 204 (A) at 207F–G.

46 *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 297F, referring to *NUS South Africa (Pty) Ltd v R & E Holdings (Pty) Ltd* 2000 (3) SA 522 (E) at 526G–H.

47 *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 299G–H.

48 *Barnett v Isemonger* 1942 CPD 325 at 327; *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 793B; *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 460H–461B; *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 467G.

49 *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 793C.

50 *Kloot v Interplan Inc* 1994 (3) SA 236 (SE) at 239H.

51 Such dispute would not arise in circumstances where these costs are expressly excluded from an offer of settlement.

52 *Road Accident Fund v Registrar, Transvaal Provincial Division* 2003 (5) SA 268 (T) at 271F–I. See also the notes s v 'Paragraph 6: May cause a witness hardship' in Part D5 below.

53 *Bowman NO v Avraamides* 1991 (1) SA 92 (W) at 95E.

54 *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488; *Groenewald v Selford Motors (Edms) Bpk* 1971 (3) SA 677 (C) at 683E; *Bowman NO v Avraamides* 1991 (1) SA 92 (W) at 94G.

55 *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488; *Hills v Taxing Master* 1975 (1) SA 856 (D) at 862B.

56 *Köhne v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N) at 504B.

57 *Van Rooyen v Commercial Union Assurance Co of SA Ltd* 1983 (2) SA 465 (O) at 467F. See also *Jandrell v Stanley* 1967 (3) SA 24 (T) at 26A.

58 *Car Investments (Pty) Ltd v J Moss & Co (Pty) Ltd* 1972 (2) SA 206 (D) at 208F; *DBM Huurmasjiene v Administrateur, Oranje-Vrystaat* 1987 (4) SA 264 (O) at 270I–271E. See also *Jandrell v Stanley* 1967 (3) SA 24 (T) which deals with the same question within the context of magistrates' courts procedure.

59 *Botha v Themistocleous* 1966 (1) SA 107 (T) at 110; *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 299A–C where the full court added that this would normally only arise if a dispute is squarely raised in a taxation or where good reason exists to suspect that the services claimed for have not been performed and that in circumstances such as these, the taxing master is under a duty to afford the affected party an opportunity to deal with any disputed questions of fact.

60 *Gluckman v Winter* 1931 AD 449 at 450.

61 *Payen Components South Africa Ltd v Bovic Gaskets CC* 1999 (2) SA 409 (W) at 415C–D.

62 2018 (6) SA 292 (ECG).

63 At 299F–G (footnotes omitted).

64 *Trollip v Taxing Mistress, High Court* 2018 (6) SA 292 (ECG) at 299C.

65 2018 (6) SA 292 (ECG).

66 At 299C–E.

67 1999 (4) SA 503 (W) at 511I-512A.

[68] *Cohn v Pratt* 1925 WLD 115 at 119; *Schoeman v Phoenix Assurance Co Ltd* 1963 (3) SA 742 (E) at 746F; *Papp v Legal and General Assurance Society Ltd* 1966 (2) SA 113 (E) at 114G; *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 122C; *Claassen v Protea Assurance Co Ltd* 1982 (2) SA 324 (SE).

[69] *Lorgat v Bastion Insurance Co Ltd* 1967 (2) SA 175 (E).

[70] *Meer v Taxing Master* 1967 (4) SA 652 (D) at 654H–655B, cited with approval in *Durban City Council v Taxing Master* 1975 (2) SA 235 (D) at 238C. On premature incurring of charges, see further *Buckley v Francis* 1950 (2) SA 709 (C); *Schoeman v Phoenix Assurance Co Ltd* 1963 (3) SA 742 (E); *Papp v Legal and General Assurance Society Ltd* 1966 (2) SA 113 (E); *Mbodla v AA Mutual Insurance Association Ltd* 1978 (4) SA 546 (SE); *Brivik Bros (Pty) Ltd v Balmoral Sales Corporation (Pty) Ltd* 1978 (4) SA 716 (W).

[71] *Minister of Water Affairs v Meyburg* 1966 (4) SA 51 (E), distinguishing *Thumler v Weiss* 1934 EDL 224.

[72] *Warmbad Makelaars v Marais* 1983 (2) SA 417 (T).

[73] See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61F.

[74] See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61C.

[75] See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61D and 62D.

[76] See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61D.

[77] See *Price Waterhouse Meyernel v Thoroughbred Breeders' Association of South Africa* 2003 (3) SA 54 (SCA) at 61E.

[78] *Olgar v Minister of Safety and Security* 2012 (4) SA 127 (ECG) at 132I.

[79] *Allen v Liquidators BSA Asphalte Co* (1906) 23 SC 420; *Vermeulen v Du Toit* 1975 (4) SA 31 (T); *M J Silver, Rothbart & Cohen: In re Lowveld Macadamia Industries Bpk (in likwidasie)* 1996 (4) SA 633 (T) at 636B–C.

[80] See *Schaeffer and Schaeffer v Maller & Emdin NO* 1937 CPD 243; *Gründer v Gründer* 1990 (4) SA 680 (C) at 684C.

[81] See *Gründer v Gründer* 1990 (4) SA 680 (C) at 684C.

[82] *Iscor Estates v Van Wyk* 1966 (2) SA 386 (T).

[83] *Herbert v Isaacs* 1973 (4) SA 106 (RAD).

[84] *Van Os v Breda* 1911 TPD 165. See also *Air Products SA (Pty) Ltd v Smith t/a Boschpick Structural Engineering* 1978 (2) SA 397 (C).

[85] *Krull v Bursey* 1966 (4) SA 448 (E) at 450C–D.

[86] *Boustred Ltd v Standard Bank of SA Ltd* 1927 WLD 88.

[87] *Michau v Van der Merwe* 1927 CPD 107.

[88] *Africon Engineering International (Pty) Ltd v The Taxing Master NO* 2005 (6) SA 397 (C) at 401G–402C.

[89] *Boland Bank Ltd v Van Blommenstein* 1986 (1) SA 797 (C).

[90] *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP) at 54I–J.

[91] *CHK Botha en HMM Botha v Santam Beperk* (unreported, TPD case no 10240/93). The judgment is discussed in 1997 (April) *De Rebus* 205.

[92] *Greenblatt v Wireohms South Africa (Pty) Ltd* 1960 (2) SA 527 (C) at 529H; *Thornycroft Cartage Co v Beier & Co (Pty) Ltd* 1962 (3) SA 26 (N) at 28D; *Loots v Loots* 1974 (1) SA 431 (E) at 434D; *Costello v Registrar of the High Court, Salisbury* 1974 (3) SA 289 (R) at 292D; *Aircraft Completions Centre (Pty) Ltd v Rossouw* 2004 (1) SA 123 (W); *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP) at 54I–55A.

93 *Greenblatt v Wireohms South Africa (Pty) Ltd* 1960 (2) SA 527 (C); *Bradshaw v Florida Twin Estates (Pty) Ltd* 1973 (3) SA 315 (D) at 317C–D *Aircraft Completions Centre (Pty) Ltd v Rossouw* 2004 (1) SA 123 (W).

94 *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 118G–119E.

95 As to costs on an attorney and client scale in general, see Part D5 below.

96 *Coetzee v Taxing Master, South Gauteng High Court* 2013 (1) SA 74 (GSJ) at 79H–J. It has been said that the discretion conferred upon the taxing master to depart from the provisions of the tariff relates perhaps in particular to attorney and client bills of costs (*Loots v Loots* 1974 (1) SA 431 (E) at 434C). See also *Malan v Meyer* 1974 (1) SA 476 (T). As to attorney and own client costs in general, see Part D5 below.

97 *Coetzee v Taxing Master, South Gauteng High Court* 2013 (1) SA 74 (GSJ) at 80A–B; *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP) at 55B–56F.

98 *Coetzee v Taxing Master, South Gauteng High Court* 2013 (1) SA 74 (GSJ) at 80B–C.

99 *Coetzee v Taxing Master, South Gauteng High Court* 2013 (1) SA 74 (GSJ) at 80C–D.

100 *Coetzee v Taxing Master, South Gauteng High Court* 2013 (1) SA 74 (GSJ) at 81G–82C.

101 Roos *Taxation of Bills of Costs* 9.

102 See, for example, *Harris Clothing Industries (Pty) Ltd v Gani & Co Ltd* 1953 (2) SA 449 (T) at 452; *Brooks v Taxing Master* 1960 (3) SA 225 (N) at 230; *City Real Estate Co v Ground Investment Group (Natal) (Pty) Ltd* 1973 (1) SA 93 (N) at 96; *Loots v Loots* 1974 (1) SA 431 (E) at 433; *Raymond v Raymond* 1974 (3) SA 872 (T) at 875; *Tshabalala v Hood* 1986 (2) SA 615 (O) at 620–1; *Cambridge Plan AG v Cambridge Diet (Pty) Ltd* 1990 (2) SA 574 (T) at 582F–H; *Law Society of the Cape of Good Hope v Windvogel* 1996 (1) SA 1171 (C) at 1176E–G. See also *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T) at 257B–258E; *Society of Advocates of KwaZulu-Natal v Levin* 2015 (6) SA 50 (KZP) at 55B–56F.

103 When taxing a bill between an attorney and his own client, the taxing master is empowered, and indeed duty bound, to satisfy himself that the fees claimed relate to work actually authorized and that the fees charged are reasonable (*Malcolm Lyons & Munro v Abro* 1991 (3) SA 464 (W) at 469E. See also *Cambridge Plan AG v Cambridge Diet (Pty) Ltd* 1990 (2) SA 574 (T); *Muller v The Master and Another* 1992 (4) SA 277 (T); *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T) at 258H).

104 This paragraph was inserted into the text of the main work by a supplement in 1956.

105 1996 (1) SA 1171 (C) at 1176H. See also *Ben McDonald Inc and Another v Rudolph and Another* 1997 (4) SA 252 (T) at 256D.

106 At 1176H.

107 At 1178D.

108 The practice derives from *Cambridge Plan AG v Cambridge Diet (Pty) Ltd* 1990 (2) SA 574 (T). Such an order was made in *Delfante v Delta Electrical Industries Ltd* 1992 (2) SA 221 (C). In *Hyperchemicals International (Pty) Ltd v Maybaker Agrichem (Pty) Ltd* 1992 (1) SA 89 (W) at 102 the court declined, on the facts, to make such an order.

109 *Law Society of the Cape of Good Hope v Windvogel* 1996 (1) SA 1171 (C) at 1178D. See further the notes sv 'Costs in general—attorney and own client costs' in Part D5 below.

110 *Petree Diamond Mining Co Ltd v Dreyfus* (1884) 3 HCG 6; *Re Gerd's Estate* (1891) 6 EDC 53; *Bell v Rajmussen* (1897) 12 EDC 81.

111 *Taxation of Bills of Costs* 39.

112 *Law of Taxation* 149n 35.

113 1913 TPD 494.

114 *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 461A–B. Prior to its substitution by GN R2021 of 5 November 1971 the subrule did not permit the taxing master to allow a charge for the copying of a document unless the document was actually used at the hearing. Decisions given under the old subrule (these include *Knipe v Venter* 1965 (4) SA 1 (C); *Waring v Mervis* 1970 (3) SA 594

(W) and *Kruger v Secretary for Inland Revenue* 1972 (1) SA 749 (C)) do not apply to the subrule in its present form.

115 *Adamson v Beckett* 1929 CPD 191; *Nokwe v Stolz* 1960 (4) SA 79 (W); *Hastings v The Taxing Master* 1962 (3) SA 789 (N) at 794H, 796B–E; *Krohn v Minister of Mines* 1968 (4) SA 193 (C); *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 464G.

116 *Maberley v Woodstock Municipality* (1901) 18 SC 257 at 270.

117 *Friedrich Kling GmbH v Continental Jewellery Manufacturers* 1993 (3) SA 76 (C) at 88E; and see *AD v MEC for Health and Social Development, Western Cape* 2017 (5) SA 134 (WCC) at 138C–G and 139A–D.

118 *AD v MEC for Health and Social Development, Western Cape* 2017 (5) SA 134 (WCC) at 139D–E.

119 *Kellerman v Die Takseermeester* 1971 (4) SA 103 (NC) at 104H; *Schoeman v Schoeman* 1990 (2) SA 37 (E) at 39G; *Friedrich Kling GmbH v Continental Jewellery Manufacturers* 1993 (3) SA 76 (C) at 88F–G.

120 See Jacobs & Ehlers *Law of Taxation* 83; *Eldraw Motors (Pty) Ltd v Salzwedel* 1984 (2) SA 846 (E) at 848E.

121 *Upfold v Maingard* 1960 (1) SA 561 (N); and see *Krohn v Minister of Mines* 1968 (4) SA 193 (C).

122 *Kellerman v Die Takseermeester* 1971 (4) SA 103 (NC) at 104G.

123 *Human v Van Wijk* 1906 TS 8 at 10–11; *Policansky Bros v Hermann & Canard* 1911 TPD 319 at 332; *SA Railways v Kemp* 1915 TPD 618 at 620; *Commissioner for Inland Revenue v Baikie* 1932 AD 184 at 187; *Fanels (Pty) Ltd v Simmons NO* 1957 (4) SA 591 (T); *Cordingley NO v BP Southern Africa (Pty) Ltd* 1971 (3) SA 118 (O) at 122G–H; *Skosana v DACM Carriers (Pty) Ltd* 1975 (1) SA 944 (T); *Eldraw Motors (Pty) Ltd v Salzwedel* 1984 (2) SA 846 (E) at 849F; *Sonnenburg v Moima* 1987 (1) SA 571 (T); *The Master v Gerber; Thomas v Minister of Law and Order* 1989 (2) SA 659 (E); *Santambank Bpk v Dimo* 1993 (1) SA 702 (O); *Niceffek (Edms) Bpk v Eastvaal Motors* 1993 (2) SA 144 (O); *Zeelie v General Accident Insurance Co Ltd* 1993 (2) SA 776 (E); *Stuart-Lamb v Stuart-Lamb* 1997 (3) SA 140 (E); *AD v MEC for Health and Social Development, Western Cape* 2017 (5) SA 134 (WCC) at 139A–D.

124 *SAR & H v Illovo Sugar Estates Ltd* 1954 (4) SA 425 (N) at 429; *Knipe v Venter* 1965 (4) SA 1 (C) at 4D–G; *Minister of Water Affairs v Meyburg* 1966 (4) SA 51 (E) at 54F–G; *Friedrich Kling GmbH v Continental Jewellery Manufacturers* 1993 (3) SA 76 (C) at 88C–D.

125 *Sonnenburg v Moima* 1987 (1) SA 571 (T) at 575F–G, as qualified in *The Master v Gerber; Thomas v Minister of Law and Order* 1989 (2) SA 659 (E) at 663H–664A; *Schoeman v Schoeman* 1990 (2) SA 37 (E) at 41I–43E; *Niceffek (Edms) Bpk v Eastvaal Motors* 1993 (2) SA 144 (O) at 152I–154A.

126 1990 (2) SA 37 (E) at 42H. See also *Zeelie v General Accident Insurance Co Ltd* 1993 (2) SA 776 (E) at 77H–778A.

127 *Morris v Commercial Union Assurance Co of SA Ltd* 1990 (3) SA 934 (W) at 935F–G.

128 *Niceffek (Edms) Bpk v Eastvaal Motors* 1993 (2) SA 144 (O). See also *Santambank Bpk v Dimo* 1993 (1) SA 702 (O).

129 *Schoeman v Schoeman* 1990 (2) SA 37 (E) at 42H–43E where the *obiter* remarks of Zietsman AJP in *The Master v Gerber; Thomas v Minister of Law and Order* 1989 (2) SA 659 (E) at 663H–664A are cited with approval. See also *Niceffek (Edms) Bpk v Eastvaal Motors* 1993 (2) SA 144 (O) at 153H and 155C; *Zeelie v General Accident Insurance Co Ltd* 1993 (2) SA 776 (E) at 778B–C.

130 1993 (2) SA 776 (E).

131 *Ndzamela v Eastern Cape Development Corporation Ltd* 2004 (6) SA 378 (Tk) at 383D–F.

132 *Ndzamela v Eastern Cape Development Corporation Ltd* 2004 (6) SA 378 (Tk) at 383G–H.

133 See *Ndezena v Marine & Trade Insurance Co Ltd* 1980 (3) SA 361 (E); *Kgomo v South African Eagle Insurance Co Ltd* 1981 (2) SA 460 (T); *Rogoff NO v The Master* 1981 (2) SA 861 (C); *P R Dreyer & Co v Reboutsikas* 1982 (3) SA 597 (N) and *De Witt v De Witt* 1982 (4) SA 596 (C) in which *Munisipaliteit van Roodepoort v Koch* 1979 (2) SA 749 (T) and *Dlamini v SA Mutual Fire & General Insurance Co Ltd* 1980 (3) SA 356 (T) were not approved. See also *Venter v Venter* 1970 (3) SA 257 (A). In *Kurosaki Refractories Co Ltd v Flogates Ltd* 1986 (1) SA 269 (T) Nestadt J held (at 271I) that in principle there is no reason per se to differentiate between an amendment to a tariff of fees and its repeal and replacement — both involve changes (usually an increase) in the scale of fees and the only

question is whether it is intended to be restrospective.

134 See *Vaatz v Law Society of Namibia* 1994 (3) SA 536 (NmHC) at 541A.

135 See *Rocky & Witherow (Pty) Ltd v Taxing Master* 1970 (1) SA 702 (N).

136 *Goldschmidt v Folb* 1974 (3) SA 778 (T) at 7890C–E.

137 *Isakow v Reichman* 1935 (2) PH F122, following *Rieseberg v Asdecker* 1927 WLD 133 which dealt with junior counsel's absence from court during a trial. See also *Kruger v De Bruyn* 1943 OPD 38 at 42.

138 It was so held by Van Dijkhorst J in *CHK Botha en HMM Botha v Santam* (unreported, TPD case no 10240/93). Van Dijkhorst J held that the oversight on the part of the Rules Board giving rise to the *lacuna* in the tariff was of a sufficiently extraordinary nature to justify a taxing master to allow a fee for 'attendance' by an attorney. See further the notes to subrule (5) s v 'To depart from any of the provisions of the tariff' above.

139 *Knipe v Venter* 1965 (4) SA 1 (C) at 2H; and see *Majola v Union and South West Africa Insurance Co Ltd* 1978 (2) SA 154 (SE) at 155G.

140 *Raymond v Raymond* 1974 (3) SA 872 (T) at 876G–H.

141 *Raymond v Raymond* 1974 (3) SA 872 (T) at 876G–H; *Jacobs v Plascon-Evans Paints (Tvl) Ltd* 1981 (3) SA 495 (T) at 497H–498F; *Magwill Carriers (Pty) Ltd v National Transport Commission* 1982 (1) SA 166 (T) at 171G–172A; *Henpet Shades CC v Garzouzie* 1998 (3) SA 929 (O) at 936E.

142 *Goldschmidt v Folb* 1974 (3) SA 778 (T) at 781B–H; *Mabaso v Road Accident Fund* 2012 (2) SA 656 (FB) at 659H–660D.

143 *McLaren v McLaren* 1979 (2) SA 566 (C).

144 *Linton & Co v Assistant Taxing Master* 1972 (2) SA 550 (D) at 552.

145 *Durban City Council v Taxing Master* 1975 (2) SA 235 (D) at 237E.

146 *Thornycroft Cartage Co v Beier & Co (Pty) Ltd* 1962 (3) SA 26 (N) at 33F; and see *Rosenberg v Standard Bank of SA Ltd* 1940 WLD 119 at 126; *Chemical Formulators and Consultants (Pty) Ltd v Detsaver Chemicals (Pty) Ltd* 1976 (1) SA 638 (W) at 642D; *Celebrity Engineering (Pty) Ltd v SA Railways and Harbours* 1976 (2) SA 346 (T) at 348A; *Visser v Gubb* 1981 (3) SA 753 (C) at 756D.

147 *De Villiers v Estate Hunt* 1940 CPD 518; *Greenblatt v Wireohms South Africa (Pty) Ltd* 1960 (2) SA 527 (C) at 528A–B and 530A–B; *Wapenaar v Du Toit* 1962 (1) SA 239 (W) at 242H; *Tulbagh Municipality v Waveren Boukontrakteurs (Edms) Bpk* 1968 (3) SA 246 (C) at 248A–C; *Goldschmidt v Folb* 1974 (3) SA 778 (T) at 782D and 783C–F.

148 *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 465B.

149 *Waring v Mervis* 1970 (3) SA 594 (W) at 597A–E; *Chemical Formulators and Consultants (Pty) Ltd v Detsave Chemicals (Pty) Ltd* 1976 (1) SA 638 (W) at 642; *Brivik Bros (Pty) Ltd v Balmoral Sales Corporation (Pty) Ltd* 1978 (4) SA 716 (W) at 718C; *Said v Kimmel* 1979 (4) SA 354 (W) at 355H–356B; *Visser v Gubb* 1981 (3) SA 753 (C) at 756F–757B. See, however, the views of Hannah J in *Vaatz v Law Society of Namibia* 1994 (3) SA 536 (NmHC) at 541C–542J.

150 *Waring v Mervis* 1970 (3) SA 594 (W) at 597G; *Chemical Formulators and Consultants (Pty) Ltd v Detsave Chemicals (Pty) Ltd* 1976 (1) SA 638 (W) at 642H; *Brivik Bros (Pty) Ltd v Balmoral Sales Corporation (Pty) Ltd* 1978 (4) SA 716 (W) at 720C.

151 *General Leasing Corporation Ltd v Louw* 1974 (4) SA 455 (C) at 463E–F.

152 1980 (1) SA 103 (T) at 105A.

153 *Thumler v Weiss* 1934 EDL 224 at 228; *Stevens v Provincial Insurance Co Ltd* 1966 (3) SA 62 (N) at 63C–G.

154 *Meer v Taxing Master* 1967 (4) SA 652 (D) at 655F; *Stevens v Provincial Insurance Co Ltd* 1966 (3) SA 62 (N) at 64H–65A; *Durban City Council v Taxing Master* 1975 (2) SA 235 (D) at 238B–D.

155 *Wocke v Williams* 1922 TPD 78; *Stevens v Provincial Insurance Co Ltd* 1966 (3) SA 62 (N) at 64H–65A; and see Van Zyl *Judicial Practice* vol II 943.

156 *De Villiers v Estate Hunt* 1940 CPD 518.

157 *Stuttaford v Kruger* 1967 (1) SA 481 (C) at 487D–F.

158 The scope of qualifying expenses is considered, with full reference to earlier authority, in *Köhne v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N). See also *Champion v Morkel* 1971 (2) SA 121 (R) at 128; *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W); *Julies v Cape Town Municipality* 1976 (3) SA 138 (C); *Owen v Owen* 1979 (2) SA 568 (C); *Administrator, Cape v Buffalo Park Township (Pty) Ltd* 1980 (2) SA 430 (SE); *Theron, Van der Poel, Brink, Roos v Simonsig Landgoed* 1994 (4) SA 204 (A).

159 *Köhne v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N) at 504E.

160 *Theron, Van der Poel, Brink, Roos v Simonsig Landgoed* 1994 (4) SA 204 (A) at 208E–F.

161 *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W) at 117D–E; *Van Deventer v Commercial Union Insurance Co Ltd* 1997 (4) SA 890 (T).

162 In *Thibela v Minister van Wet en Orde* 1995 (3) SA 147 (T) at 151G, in the absence of a request (presumably as the result of an oversight by counsel), the judge made the order *suo motu*.

163 *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (W); *Community Development Board v Katija Suliman Lockhat Trust* 1973 (4) SA 225 (N) at 228G–229A; *Van Wyk v Protea Assurance Co Ltd* 1974 (3) SA 499 (SWA); *Ferreira v Ferreira* 1977 (4) SA 618 (O) at 620D; *Luvuno v Southern Insurance Co Ltd* 1980 (2) SA 931 (D) at 934C.

164 *Lynmar Investments (Pty) Ltd v South African Railways and Harbours* 1975 (4) SA 445 (D) at 446C–447A. See also *Gerber v Union Government (Minister of Interior)* 1911 CPD 855 at 861; *Van Wyk v Protea Assurance Co Ltd* 1974 (3) SA 499 (SWA) at 503A.

165 *Stauffer Chemical Co and Another v Safsan Marketing and Distribution Co (Pty) Ltd* 1987 (2) SA 331 (A) at 355C–G; *Cassel and Benedick NNO v Rheeder and Cohen NNO* 1991 (2) SA 846 (A) at 853F–I.

166 *Roos v Morkel and Somerset West Municipality* 1915 CPD 201; *Breetzke v Union Government* 1911 EDL 394; *De Villiers v Stadsraad van Pretoria* 1967 (4) SA 533 (T); *Van Wyk v Protea Assurance Co Ltd* 1974 (3) SA 499 (SWA).

167 As was done in, for example, *Köhne v Union & National Insurance Co Ltd* 1968 (2) SA 499 (N) at 500. An agreement relating to a claim for bodily injuries to pay an amount as damages plus taxed costs plus such medico-legal fees as are allowed by the taxing officer, includes the qualifying fees of medical experts (*Muller v AA Mutual Insurance Ass Ltd* 1973 (2) SA 787 (T)).

168 *The Messenger v Amod* 1909 TS 79.