

**The
Student Handbook
for
Civil Procedure**

2016 Supplement

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Preface

Since publication of the seventh edition of this work, a few minor changes to the Uniform Rules of Court as well as the Magistrates' Courts Rules have been annotated.

For the sake of brevity and clarity, only those changes which are all relevant for study purposes have been included in this *Supplement*.

We suggest that, on receipt of the Student Handbook and this Supplement, you immediately note the deletions or amendments in the relevant portions of the main work to avoid confusion. We have referred you to the relevant page of the main work in all instances to assist you in this task.

The legislation included incorporates changes up to 30 November 2015.

JOHN FARIS

ESTELLE HURTER

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Superior Courts

**Rules Regulating the Conduct of the
Proceedings of the Several Provincial and
Local Divisions of the Supreme Court of
South Africa
(also referred to as the Uniform Rules of
Court)**

Rule 10A has been replaced (see page 72 of the main work):

10A. Joinder of provincial or national executive authorities and service on Rules Board for Courts of Law

(1) If in any proceedings before the court, the validity of a law is challenged, whether in whole or in part and whether on constitutional grounds or otherwise, the party challenging the validity of the law must join the provincial or national executive authorities responsible for the administration of the law in the proceedings.

(2) Where a challenge referred to in subrule (1) is made against a rule made by the Rules Board for Courts of Law, the party challenging the rule must, at the time when the challenge is made, serve on the Rules Board for Courts of Law, a notice setting out the basis of the challenge, together with copies of all documents in which the challenge is referred to.

Rule 49 has been amended by the repeal of rule 49(11) (see page 112 of the main work).

Rule 53 has been amended by the replacement of rules 53(1), (3), (4) and (5) (see pages 115–116):

53. (1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he or she has done so.

(3) The registrar shall make available to the applicant the record despatched to him or her as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon

cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

. . .

(4) The applicant may within ten days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.

. . .

(5) Should the presiding officer, chairperson or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he or she shall –

(a) within fifteen days after receipt by him or her of the notice of motion or any amendment thereof deliver notice to the applicant that he or she intends so to oppose and shall in such notice appoint an address within 15 kilometres of the office of the registrar at which he or she will accept notice and service of all process in such proceedings; and

(b) within thirty days after the expiry of the time referred to in subrule (4) hereof, deliver any affidavits he or she may desire in answer to the allegations made by the applicant."

Lower Courts

Magistrates' Courts Rules

Rule 14 has been amended by the replacement of rule 14(1) and (2) (see page 174 of the main work):

14. Summary judgment.—(1) Where the defendant has served notice of intention to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only—

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for delivery of specified movable property; or
- (d) for ejectment,

together with any claim for interest and costs.

(2) (a) The plaintiff shall within 15 days after the date of service of notice of intention to defend, deliver notice of application for summary judgment, together with an affidavit made by plaintiff or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed and stating that in his or her opinion there is no *bona fide* defence to the action and that notice of intention to defend has been served solely for the purposes of delay.

(b) A copy of the served notice of intention to defend must be annexed to such affidavit.

(c) If the claim is founded on a liquid document a copy of the document must be annexed to such affidavit.

(d) The notice of application for summary judgment must state that the application will be set down for hearing on a stated day not being less than 10 days from the date of the delivery thereof.

Rule 27 has been amended by the replacement of rule 27(5), (6) and (8) (see page 189 of the main work):

27. (5) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, the attorney for the plaintiff or applicant shall inform the registrar or clerk of the court and other parties thereto by delivering a notice accordingly.

(6) (a) Application may be made to the court by any party at any time before judgment to record the terms of any settlement agreed to by the parties to a proceeding without entry of judgment: Provided that if the terms of settlement so provide, the court may make such settlement an order of court.

(b) Where any party to a settlement agreement is not present at the time when the terms of a settlement agreement are recorded or made an order of court, the presiding Magistrate may call for the verification of the authenticity of any signature of a party to a settlement agreement before recording the terms thereof or recording same as an order of court or granting judgment in terms thereof.

(7) An application referred to in sub-rule (6) shall be on notice, except when the application is made in court during the hearing of any proceeding at which the other

party is represented or when a written waiver (which may be included in the statement of the terms of settlement) by such other party of notice of the application is produced to the court.

(8) At the hearing of an application referred to in sub-rule (6) the applicant shall lodge with the court a statement of the terms of settlement signed by all parties to the proceeding and, if no objection thereto be made by any other party, the court shall note that the proceeding has been settled on the terms set out in the statement and thereupon all further proceedings shall, save as provided in sub-rules (9) and (10), be stayed.

Rule 55 has been amended by the insertion of rule 55(10) (see page 204 of the main work):

55. (10) Rules 28 and 28A shall apply equally to all applications.

Rule 60 has been amended by the insertion of rule 60(9) (see page 207 of the main work):

60. (9) The court may, on good cause shown, condone non-compliance with these rules.

Form 8 of Annexure 1 of the Rules has been repealed and replaced by the following form (see pages 253–254 of the main work):

No. 8 – Affidavit in support of Application for Summary Judgment

***For use in the District Court**

In the Magistrate's Court for the District of _____ held at _____

Case No _____ of 20 _____

In the matter between

_____ Applicant

and

_____ Respondent

I, _____ of _____ (address), declare under oath/affirm as follows:

- (a) I am the plaintiff (or state the relationship on which the authority to represent the plaintiff is based) in this action and am duly authorised to make this affidavit, the contents of which are within my personal knowledge.
- (b) I verify that the defendant is indebted to me/to the plaintiff in the amount of R_____ and on the grounds stated in the summons.
- (c) I believe that the defendant does not have a bona fide defence to the claim and that the notice of intention to defend has been served solely for purposes of delay.
- (d) A copy of the notice of intention to defend served on _____ (date) is annexed hereto.
- (e) *(If the claim is founded on a liquid document)* A copy of the _____ (describe the relevant liquid document) is annexed hereto.

Signature

The deponent has acknowledged that he/she knows and understands the contents of this affidavit.

Signed and sworn to/affirmed before me at _____ on this ____ day of _____, 20____

Commissioner of Oaths

Area

Office held if appointment is held ex officio.

No. 8 – Affidavit in support of Application for Summary Judgment

***For use in the Regional Court**

In the Regional Court for the Regional Division of _____ held at _____

Case No _____ of 20 _____

In the matter between

_____ Applicant

and

_____ Respondent

I, ____ of ____ (address), declare under oath/affirm as follows:

- (a) I am the plaintiff (or state the relationship on which the authority to represent the plaintiff is based) in this action and am duly authorised to make this affidavit, the contents of which are within my personal knowledge.
- (b) I verify that the defendant is indebted to me/to the plaintiff in the amount of R _____ and on the grounds stated in the summons.
- (c) I believe that the defendant does not have a bona fide defence to the claim and that the notice of intention to defend has been served solely for purposes of delay.
- (d) A copy of the notice of intention to defend served on _____ (date) is annexed hereto.
- (e) *(If the claim is founded on a liquid document)* A copy of the _____ (describe the relevant liquid document) is annexed hereto.

Signature

The deponent has acknowledged that he/she knows and understands the contents of this affidavit.

Signed and sworn to/affirmed before me at _____ on this ____ day of _____, 20____

