

### 3A Admission of advocates

RS 22, 2023, D1 Rule 3A-1

(1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying for admission to practise and for authority to be enrolled as an advocate shall, at least six weeks before the day on which his application is to be heard by the court —

- (a) give written notice to the registrar of the date on which the application is to be made;
- (b)
  - (i) deliver to the registrar the original and a copy of the documents in support of the application and an affidavit stating his identity number and whether or not he has at any time been struck off the roll of advocates or suspended from his practice by the court;
  - (ii) deliver to the registrar an affidavit from his attorney or a commissioner of oaths stating that the attorney or commissioner of oaths has examined his identity document and that the attorney or commissioner is satisfied that the applicant is the person referred to in the identity document;

[Paragraph (b) substituted by GN R608 of 31 March 1989.]

- (bA) if he previously was admitted or practised as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practised to the effect that, in the opinion of the law society concerned, he is a fit and proper person;

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

- (c) serve a copy of the documents and affidavit referred to in paragraphs (a), (b) and (bA) on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Paragraph (c) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(2) . . .

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

(3) If the applicant at any time prior to the hearing of the application delivers any documents or declarations, other than the documents or affidavit referred to in paragraphs (b) and (bA) of subrule (1), to the registrar, he shall forthwith serve a copy thereof on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Subrule (3) substituted by GN R2164 of 2 October 1987 and by GN R2642 of 27 November 1987.]

(4) . . .

[Subrule (4) deleted by GN R2164 of 2 October 1987.]

(5) Any person who is admitted to practice and authorized to be enrolled as an advocate shall upon being so admitted and authorized take an oath or make an affirmation before the registrar in court, which shall be subscribed by him, in the form set out hereunder, namely —

'I, . . . . . do hereby swear/solemnly and sincerely affirm and declare/that I will truly and honestly demean myself in the practice of advocate according to the best of my knowledge and ability, and further, that I will be faithful to the Republic of South Africa.'

[Subrule (5) inserted by GN R235 of 18 February 1966.]

[Rule 3A, previously Rule 3bis, renumbered by GN R2410 of 30 September 1991.]

RS 22, 2023, D1 Rule 3A-2

#### Commentary

**General.** Prior to the coming into operation of [Chapter 3](#) of the Legal Practice [Act 28 of 2014](#) on 1 November 2018 <sup>1</sup> the admission of advocates was governed by the Admission of Advocates [Act 74 of 1964](#). The Legal Practice [Act 28 of 2014](#) repealed and replaced the Admission of Advocates [Act 74 of 1964](#). [Section 24](#) of the Legal Practice [Act 28 of 2014](#) provides as follows:

#### '24 Admission and enrolment

(1) A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.

(2) The High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the court that he or she —

- (a) is duly qualified as set out in section 26;
- (b) is a —
  - (i) South African citizen; or
  - (ii) permanent resident in the Republic;
- (c) is a fit and proper person to be so admitted; and
- (d) has served a copy of the application on the Council, containing the information as determined in the rules within the time period determined in the rules.' <sup>2</sup>

In terms of the transitional provisions of [s 115](#) of the Legal Practice [Act 28 of 2014](#) '[a]ny person who, immediately before [1 November 2018], was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary is, after that date, entitled to be admitted and enrolled as such in terms of this Act'. In *Ex parte Goosen* <sup>3</sup> the full court held <sup>4</sup> that s 115, properly interpreted, meant that anyone who, as at 1 November 2018, had satisfied the criteria for admission as an advocate existing at such time in terms of the Admission of Advocates [Act 74 of 1964](#) was entitled to admission as a legal practitioner under [s 24](#) of the Legal Practice [Act 28 of 2014](#). The right to invoke s 115 was not restricted to those whose applications were pending as at 1 November 2018, i.e. it extended to those making application on or at any time after such date. <sup>5</sup> In reaching such conclusion, the full court acknowledged that such an interpretation could mean that untrained advocates could indefinitely be allowed to practise, a situation at odds with the clear objectives of the Legal Practice [Act 28 of 2014](#) to create equivalence between the legal training of advocates and attorneys. <sup>6</sup> However, it found <sup>7</sup> that such consideration had to yield, in the case it dealt with, to the presumption of statutory interpretation of the preservation of vested rights, except where the clearest indication to the contrary was expressed in the statute. The full court added <sup>8</sup> that the Minister of Justice and Correctional Services should consider amending the legislation to cure such anomaly.

RS 22, 2023, D1 Rule 3A-3

In *Alves v Legal Practice Council and Similar Matters* <sup>9</sup> it was held that legal practitioners enrolled as attorneys were entitled to rely on s 115 to be enrolled by the Legal Practice Council as advocates.

In terms of [s 1](#) of the Legal Practice [Act 28 of 2014](#) 'legal practitioner' means 'an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30, respectively' of the Act. The 'Council' and 'rules' referred to in s 24(1)(d) of the Act respectively mean the South African Legal Practice Council established in terms of s 4 of the Act and the rules of the Council. <sup>10</sup>

In terms of rule 17.7 of the rules of the Council the original and two copies of an application for admission must lie for inspection with the Council for a period of not less than one month.

It would seem that rule 3A should now be read and applied in conjunction with the provisions of the Legal Practice [Act 28 of 2014](#) and the rules of the Council.

**Subrule (1): 'Applying for admission.'** In general the applicant must allege and prove that the court has jurisdiction to hear the application.

**Subrule (1)(a): 'Give written notice to the registrar.'** The registrar in question is the registrar of the division of the High Court in which the application for admission is to be heard.

**Subrule (1)(b)(i): 'Deliver to the registrar.'** See the notes to subrule (1)(a) s v 'Give written notice to the registrar' above.

**Subrule (1)(c): 'Serve . . . on the Secretary of the Bar Council or the Society of Advocates of the division concerned.'** On 29 April 2019 the chairperson of the Legal Practice Council issued the following notice:

**'NOTICE TO ALL LEGAL PRACTITIONERS  
APPLICATION FOR ADMISSION: ADVOCATES**

Please note that a person who wishes to apply for admission as an advocate, must serve his/her application on the relevant Bar Council and the relevant Provincial Council (PC) of the Legal Practice Council (LPC) in terms of Rule 17 of the LPC. The relevant PC will be the one in whose area of jurisdiction the applicant intends to practise. Addresses and contact details are obtainable from the LPC.

The following will apply where Section 115 of the Legal Practice Act is applicable, i e where the applicant was entitled to be admitted and enrolled as an advocate before 1 November 2018:

- The application will be processed by the relevant Bar Council and not the LPC, by agreement between the LPC and the Bar Councils.
- The PC must still collect the prescribed fee of R460 in terms of Rule 2.4 of the LPC for the application for admission and enrolment as advocate before the LPC Officer can affix the official stamp of the LPC and peruse the documents to ascertain whether the provisions of the Legal Practice Act will apply (i e whether the applicant obtained his/her LLB degree before 1 November 2018).
- The PC needs to keep a copy of the application. The relevant Bar Council will process the application for admission and the applicant should uplift the documents from the Bar Council to file with the Court.

RS 22, 2023, D1 Rule 3A-4

**MS KATHLEEN DLEPU  
LEGAL PRACTICE COUNCIL: CHAIRPERSON  
29 April 2019'**

In the Gauteng Division of the High Court, Pretoria, and the Gauteng local seat of the High Court, Johannesburg, applicants serve copies of the documents concerned on both the secretary of the Society of Advocates in Pretoria and the secretary of the Society of Advocates in Johannesburg.

<sup>1</sup> Proc R31 published in GG 42003 of 29 October 2018.

<sup>2</sup> In *Rafoneke v Minister of Justice and Correctional Services* [2022 \(1\) SA 610 \(FB\)](#) the full court held (at paragraph [115]) that s 24(2) was inconsistent with the Constitution and invalid to the extent that it did not allow non-citizens to be admitted and authorized to be enrolled as non-practising legal practitioners. The Constitutional Court, *sub nomine Rafoneke v Minister of Justice and Correctional Services* [2022 \(6\) SA 27 \(CC\)](#), however, declined to confirm the order of invalidity (at paragraphs [104] and [106]).

<sup>3</sup> [2019 \(3\) SA 489 \(GJ\)](#). See also *Ex parte Bakkes and Similar Cases* [2019 \(2\) SA 486 \(ECG\)](#) at 489F–H; *Alves v Legal Practice Council and Similar Matters* 2019 (2) SA 18 (WCC) (in which it was held that legal practitioners enrolled as attorneys were entitled to rely on s 115 to be enrolled by the Legal Practice Council as advocates).

<sup>4</sup> At paragraphs [22], [23], [29], [33], [51], [53] and [54]).

<sup>5</sup> At paragraphs [23], [51], [53], [54]).

<sup>6</sup> At paragraph [51].

<sup>7</sup> At paragraphs [37], [39], and [51].

<sup>8</sup> At paragraph [52].

<sup>9</sup> 2019 (2) SA 18 (WCC), confirmed on appeal in *South African Legal Practice Council v Alves* [2021 \(4\) SA 158 \(SCA\)](#).

<sup>10</sup> Section 1 of the Legal Practice Act 28 of 2018. The rules were published under [GenN 401](#) in GG 41781 of 20 July 2018 and amended by GenN 812 in GG 42127 of 21 December 2018.