

## RIGHT OF APPEARANCE IN COURTS ACT 62 OF 1995

[ASSENTED TO 28 SEPTEMBER 1995] [DATE OF COMMENCEMENT: 1 NOVEMBER 1995]

*(English text signed by the President)*

**as amended by**

Judicial Matters Amendment Act 22 of 2005

### ACT

**To regulate by Act of Parliament the right of advocates and attorneys to appear in courts in the Republic, and to extend the existing right of attorneys so to appear; and to provide for matters connected therewith.**

#### 1 Definitions

In this Act, unless the context otherwise indicates-

**'advocate'** means any person duly admitted and enrolled as an advocate in terms of-

- (a) the Admission of Advocates Act, 1964 ( Act 74 of 1964 ); or
- (b) any law providing for the admission of advocates in any area in the Republic which remained in force by virtue of section 229 of the Constitution;

**'attorney'** means any person duly admitted and enrolled as an attorney in terms of-

- (a) the Attorneys Act, 1979 ( Act 53 of 1979 ); or
- (b) any law providing for the admission of attorneys in any area in the Republic which remained in force by virtue of section 229 of the Constitution;

**'Constitutional Court'** means the Constitutional Court established by section 98 of the Constitution;

**'designated country'** means a country designated by the Minister of Justice by notice in the *Gazette* for the purposes section 4;

**'Supreme Court'** means the Supreme Court of the Republic of South Africa contemplated in section 101 of the Constitution.

#### 2 Right of advocates to appear in court

Any advocate shall have the right to appear on behalf of any person in any court in the Republic.

#### 3 Right of attorneys to appear in court

(1) Any attorney shall have the right to appear on behalf of any person in any court in the Republic, except the Supreme Court and the Constitutional Court.

(2) Any attorney who wishes to acquire the right to appear on behalf of any person in the Supreme Court may apply to the registrar of a provincial division of the Supreme Court in the manner provided for in section 4 (1).

(3) Any attorney who has acquired the right of appearance in the Supreme Court may also appear in the Constitutional Court.

(4) An attorney who has been granted the right of appearance in the Supreme Court shall also be entitled to discharge the other functions of an advocate in any proceedings in the Supreme Court.

#### **4 Application of attorney to appear in Supreme Court**

(1) An application by an attorney to appear in the Supreme Court, shall be in writing, shall be signed by him or her and shall be accompanied by-

- (a) documentary proof that he or she has satisfied all the requirements for-
  - (i) the degree *baccalaureus legum* of any university in the Republic; or
  - (ii) a degree of any university in a designated country in respect of which a university in the Republic with a faculty of law has certified that the syllabus and standard of instruction are at least equal to those required for the degree *baccalaureus legum* of a university in the Republic; or
  - (iii) a degree which is the equivalent of the *baccalaureus legum* degree and in respect of which an exemption contemplated in section 2 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993 ( Act 114 of 1993 ), has been granted; or
- (b) a certificate issued by the secretary of the law society of which the applicant is a member, to the effect that the applicant has been practising as an attorney or has been performing community service as an attorney at any law clinic, for a continuous period of not less than three years; and
- (c) a certificate signed by the secretary of the said law society to the effect that no proceedings to strike the applicant's name off the roll of attorneys, or to suspend him or her from practice as an attorney, have been instituted by that law society.

(2) If the registrar is satisfied that an application referred to in subsection (1) complies with the provisions of this Act, he or she shall issue a certificate to the effect that the applicant has the right of appearance in the Supreme Court.

(3) Section 21 of the Attorneys Act, 1979 ( Act 53 of 1979 ), which requires rolls of attorneys to be kept, shall apply *mutatis mutandis* in respect of attorneys who have been granted the right of appearance in the Supreme Court.

(4) An attorney who has been granted the right of appearance in terms of this section shall be entitled to appear in any court throughout the Republic.

[Sub-s. (4) inserted by s. 7 of Act 22 of 2005.]

#### **5 Withdrawal or suspension of attorney's right of appearance in Supreme Court**

(1) The court of any division of the Supreme Court may upon application of any person order the withdrawal or suspension of an attorney's right of appearance in the Supreme Court if the court is satisfied that he or she is not a fit and proper person so to appear: Provided that if such an application is not brought by the law society of which that attorney is a member, due notice of such an application shall also be given to the law society concerned.

(2) The court which made an order contemplated in subsection (1) may upon application of an attorney whose right to appear on behalf of any person in the Supreme

Court has been withdrawn or suspended, and upon submission by such attorney of proof that the person who brought the application, and the law society concerned, if applicable, have been notified of the application, grant to such attorney the right so to appear if that court is satisfied that the grounds for the withdrawal or suspension no longer exist and that such attorney is a fit and proper person to have such a right.

## **6 Offences and unprofessional conduct**

(1) An attorney who has not acquired the right to appear on behalf of any person in the Supreme Court or an attorney whose right so to appear has been withdrawn or suspended, may not appear in the Supreme Court or hold himself or herself out as, or pretend to be, or make use of any name, title, addition or description implying or tending to induce the belief that he or she is an attorney who has the right so to appear in the Supreme Court.

(2) An attorney who contravenes subsection (1) shall be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and any contravention of that subsection by an attorney shall, in addition, constitute unprofessional conduct.

## **7 Short title and commencement**

This Act shall be called the Right of Appearance in Courts Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette* .