



GUIDE:

SMALL CLAIMS COURT

CHANGES EFFECTIVE FROM 1 APRIL 2023



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA





1. Introduction

This Guide is intended to highlight those changes made by the new Small Claims Court Rules which provide for **new procedures**, require **new forms** to be used or for **new responsibilities** being placed on clerks and functionaries of the Small Claims Courts. More comprehensive information is to be found in the published Codified Instructions with its Annexures and in the Small Claims Court Rules published on DJINI.

As from 1 April 2023, the new Small Claims Court Rules come into operation and therefore as from this date, clerks must follow the new procedures outlined in this Guide and use the new forms provided with the Codified Instructions and NOT the forms that were being used before 1 April 2023.


Training on the new procedures and forms is provided upon request and is dependent on scheduling and availability. Should any concerns arise or clarification on any of the procedures or forms be needed, Directors Legal at Provincial Offices are available to assist, either telephonically or via email.

All forms referred to are available in the **Codified Instructions and the Small Claims Court Rules published on DJINI** and replicated in the Annexure to this Guide. The numbering of the forms remains the same throughout all mentioned documents.

2. Duties Of The Clerk Of The Court

The duties of the clerk of the court are set out in the Rules. In brief, the clerk must be available during normal working hours in order to –

1. **advise the public in connection with any enquiries** in regard to the procedures for instituting a claim, the jurisdiction of the court, dates of trial and other general enquiries (written enquiries or letters must be answered in writing);
2. refer persons to **legal assistants** for advice if necessary;
3. **receive and process documents** used in cases;
4. **issue summons** and documents of process;
5. fix **trial dates**;
6. arrange **court rolls**;
7. arrange the **duty roster for commissioner** with the co-operation of the advisory board, and inform the said commissioners regarding the arrangements;
8. inform the Director-General in writing **if a commissioner resigns, moves out of the jurisdiction of the courts or dies**;
9. ensure that the **daily roll** is attended to in court;
10. make provision for the **filing and storage of court documents**;

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11. **issue warrants of arrest and orders** which have been authorized by the commissioner and to process same;
 12. provide the plaintiffs and defendants with **copies of documents of process**, if so requested; and
 13. provide the **court file** to the commissioner and ensure that it is received back;
 14. maintain a register on availability of **audio-visual facilities** for virtual hearings; and
 15. carry out any instruction made by the commissioner which falls within the scope of **providing support to the court**.

3. Substantial Changes Made By The New Rules

THE NEW LETTER OF DEMAND AND METHODS OF SERVICE

- The format of the Letter of Demand has changed so **Form 4** must now be used.
- As before, the plaintiff must prove **service of the Letter of Demand** to the defendant by way of an affidavit or by a registered post receipt. Form 5 is to be used for the affidavit.

THE NEW SUMMONS AND METHODS OF SERVICE

- The new **Form 1** must be used.
- After the Summons is issued it must be brought to the Defendant's attention. **A copy of the Summons** may be delivered to the defendant by the plaintiff personally or by his/her authorized representative. If such personal service cannot be effected, the plaintiff must **engage the sheriff** to serve the summons in accordance with the Rules (see Rule 13). In such an event, the plaintiff must be informed that the sheriff's fees must be paid before the said service. See Rule 13(1). The plaintiff is obliged to make use of the sheriff if the defendant prevents him/her from delivering the summons by keeping his/her place of residence or business locked or for any other reason.
- Proof of service of the summons must be provided and must look like **Form 6**.

THE NEW WRITTEN STATEMENTS OF DEFENCE AND COUNTERCLAIMS AND FORMS

- The defendant who wishes to defend an action, may at any time prior to the commencement of the trial, lodge a **written statement of defence** following the format of Form 7.
- The written statement of defence **must be lodged with the clerk of the court after service on the plaintiff**. The clerk of the court must bring the written statement of defence to the attention of the plaintiff.
- In the written statement of defence, the defendant ought to **reply to every allegation** made by the plaintiff, so that it appears clearly what is and what is not admitted. If all the facts are admitted, the legal grounds on which the defence is based, for example prescription, must be set out.
- The clerk of the court must request the defendant to give the plaintiff **a copy of the written statement** of defence prior to the trial. The original written statement of defence, with the case number, must be filed in the case file.
- **A counterclaim** may be done orally or in writing. If it is made in writing it shall be made by stating in a written statement of defence, particulars of the counterclaim. If the defendant wants to lodge a counterclaim, Form 7 may also be used for this purpose.



THE NEW APPLICATION PROCEDURE AND FORMS

- Rule 10(1) of the Rules provides that any application made in terms of the Act or the Rules **may be made orally or in writing**. If an application is made in writing it must substantially correspond with **Form 8**.
- The applicant must approach the clerk of the court, who must make arrangements for the **hearing of the application**. The clerk of the court must arrange that the applicant appears at a **specific time on a specific date before a commissioner**. Although, as already mentioned, the Rules and the Act do not prescribe the form in which an application must be made, it is advisable to recommend to the applicant that the **application is submitted in writing and to request him/her to hand a copy of the application to the opposing party**, prior to the date of the trial. If the application pertains to a pending or completed case, the clerk of the court must arrange for a date of appearance before the commissioner that heard the action or who is in the process of hearing it.

AUDIO-VISUAL HEARINGS

- The parties may appear in person or by audio or audio-visual means. Any party may appear by audio or audio-visual means only after an application to the court is made **at least 3 days before the date of the hearing and an order is granted** allowing such an appearance. The clerk has the responsibility to bring such an application before the commissioner as soon as lodged by either party together with the availability of audio-visual facilities and the courts in which these are available. The clerk must maintain a **Register of the audio-visual facilities available** and their functional status. The format of the Register of the Availability of Audio-Visual Equipment in the Court is to be found in the Codified Instructions.



OFFER BY JUDGMENT DEBTOR TO PAY IN INSTALMENTS AFTER JUDGMENT AND FORMS

- If no order was issued by the court in terms of section 39(2), the judgment debtor may **within 10 days** after judgment for the payment of a sum of money, make a written offer to the judgment creditor to pay the judgment debt and costs in specified instalments or otherwise. **Form 9** may be used by the judgment debtor to make the offer.
- If such an offer is accepted by the judgment creditor, the clerk of the court must, at the written request of the judgment creditor using **Form 10**, accompanied by the offer, order the judgment debtor to pay the judgment debt and costs in accordance with the offer. **Form 10** is to be used for this purpose.
- Such an order issued by the clerk of the court shall be deemed to be an order of the court in terms of section 39 of the Act. Before the clerk of the court issues such an order, he/she must ensure that the court has not yet issued an order. **The clerk of the court must endorse the order as follows on the inside cover of the case file:**

"In terms of section 40 of Act No. 61 of 1984 it is ordered that the judgment debtor pay the judgment debt and costs in monthly instalments of R

The first instalment is payable on or before the day of 20 and thereafter on or before the Day of every succeeding month / week.

Date:Clerk of the court:

- A copy of such endorsement must be forwarded to the judgment debtor and plaintiff **within 5 days** of the granting of the request.



NEW REVIEW PROCEDURE AND FORMS

- No litigant **can appeal against the judgment** delivered by a commissioner in the Small Claims Court. However, the decision of a commissioner may be taken on review.
- The dissatisfied litigant may take the judgment on review to the **High Court** if the grounds upon which the review is brought fall within section 46 of the Small Claims Act i.e.
 - Absence of jurisdiction on the part of the court;
 - Interest in the cause, bias, malice, or the commission of an offence (falling within Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004) on the part of the commissioner; and
 - Gross irregularity with regard to the proceedings.
- **The grounds for review** are very limited and it would probably be wise to refer the litigant seeking a review to an attorney or legal aid organization to assist with preparing the review and establishing the facts and grounds for review clearly. Mere allegations without a factual basis will not be enough.
- **The amendments to the Rules** introduce a whole new procedure to note a review, in which the clerk of the Small Claims Court plays a pivotal role. **Rule 26** provides for the procedure which is now to be followed for a review.

STEPS TO BE TAKEN UPON RECEIPT OF A NOTICE OF REVIEW

1. Forward a copy of the Notice of Review together with a copy of the court file by hand or per electronic mail to -
 - the commissioner who presided during the proceedings
 - the chairman of the advisory board of the relevant court
2. **Form 13** (Statement by commissioner) will also have to be forwarded to the commissioner together with the review notice and affidavit.
3. The commissioner must **within 15 days** lodge the completed Form 13 (Statement by commissioner) with the clerk of the court by e-mail or acknowledgment of receipt.
4. The clerk of the small claims court **must send a copy of the statement** by the commissioner to
 - the party bringing the review application
 - the chairman of the advisory board
 - the Director-General: Justice and Constitutional Development (Sub-directorate: Law Enforcement)
5. The party bringing the review **has 5 days to amend**, add to or vary the review notice by using Form 14 and lodging the form with the clerk of the court. Note that **Form 14** is in the form of an affidavit and must comply with the rules as set out above.
6. The clerk of the court **must within 5 days** of receipt of the completed Form 14 notify the commissioner and the opposite party that the form is available from the clerk's office.
7. Where the commissioner **wishes to oppose the granting of relief prayed for**, the commissioner must within 5 days after receipt of the **Form 14** complete a

Form 15 (Affidavit in terms of Rule 26(9) answering the allegations made by the applicant) and lodge it with the clerk of the court by e-mail or acknowledgment of receipt. It will be advisable that the commissioner also indicate in writing if the granting of relief is not going to be opposed so as to allow the clerk of the court to comply with the stipulated time periods.

8. **Within 10 days after the expiration of the 5 day period** mentioned in Rule 26(9) the clerk of the court must make a copy of the original file and its contents and store it separately. The original file and its contents must be prepared and send to the registrar of the High Court.
9. The contents of the file must be **paginated and indexed in sequence** from the latest to oldest documents received.
10. The clerk of the court must obtain an **acknowledgment of receipt** that the indexed

and paginated file was sent and received by the registrar.

11. The **date of dispatch** must be endorsed in the review register.
12. **Regular follow-up** with the registrar as to the progress of the review application is required and must be reflected in the review register.
13. Once a decision by the Judge is received the clerk of the court must **within 5 days** after receiving the decision, notify the parties and the commissioner of the outcome.
14. The decision must also be entered in the **review register**.
15. **The Director-General: Justice and Constitutional Development, (Sub-directorate: Law Enforcement)** decides in the final instance whether the application must be opposed at State cost or not.

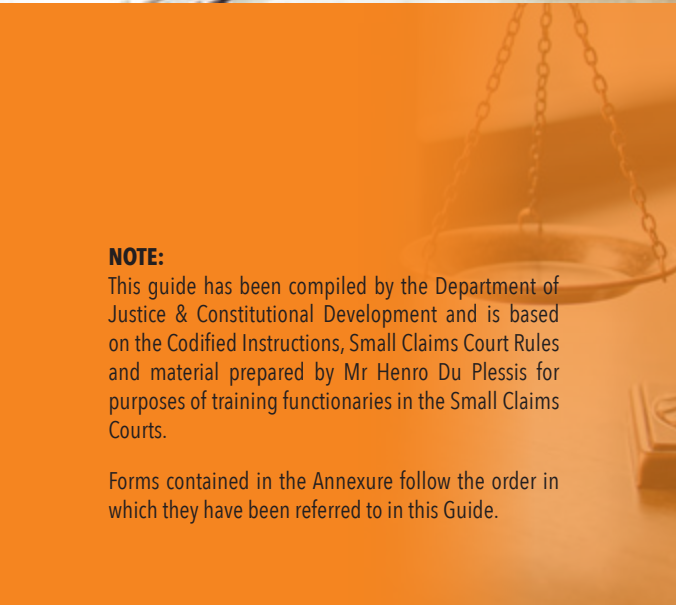
NEW FORMS FOR WARRANTS

Should a **judgment creditor fail within 10 days to comply** with a judgment of the court for the payment of a sum of money, or an order for the payment of a sum of money instalments, the judgment is enforceable in the magistrate's court that is competent to issue process in execution in terms of the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944 section 41).

The judgment creditor may lodge with the clerk of the court an application in terms of section 41(2) of the Act and the application must substantially correspond with **Form 11**.

There are three types of warrants:

- **Warrant for the delivery of goods** - This warrant is used when a court grants judgment for the delivery or transfer of goods. The clerk of the court must use a J.142 form to issue this warrant. See Rule 17 of the Rules.
- **Warrant for ejectment** - This warrant may be issued where judgment is granted for the ejectment from the premises against a tenant who is in arrears with the rent or committed a breach of contract in another manner. The warrant must be signed and issued by the clerk of the court and addressed to the sheriff and must substantially correspond with Form 2 or 3
- **Warrant for imprisonment** - If a commissioner sentences someone in terms of section 48(1), read with section 3(2) of the Act, for contempt of court, a warrant for imprisonment for the use of the commissioner is contained in the Rules and Codified Instructions.



NOTE:

This guide has been compiled by the Department of Justice & Constitutional Development and is based on the Codified Instructions, Small Claims Court Rules and material prepared by Mr Henro Du Plessis for purposes of training functionaries in the Small Claims Courts.

Forms contained in the Annexure follow the order in which they have been referred to in this Guide.

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