

2.1 Admission of advocates

Critical averments:

Formalities

Qualifications

Fit and proper person to practice

General

See section 3 of the Admission of Advocates Act 74 of 1964 and Rule 3A of the Uniform Rules of Court. The Practice Manual also contains provisions relevant to the admission of advocates

The whole of the Admission of Advocates Act 74 of 1964 has been repealed by section 119 of the Legal Practice Act 28 of 2014, a provision which is yet to come into operation

Jurisdiction

Any division of the High Court has jurisdiction

S 1 – definition of “division”, and s 3 Admission of Advocates Act

By reason of the definition, local divisions also have jurisdiction, unlike the case in the admission of attorneys

Application

The application is brought on notice of motion (Form 2) supported by an affidavit

The affidavit must set out the following:

(a) the applicant’s full names, identity number and address (establishing jurisdiction)

R 3A(1)(b)(i)

An affidavit from his attorney or a Commissioner of Oaths who has examined the applicant’s identity document and is satisfied that the applicant is the person referred to therein, must be annexed

R 3A(1)(b)(ii)

(b) he is over the age of 21 years X

S 3(1)(a) Admission of Advocates Act

It is unclear whether s 17 of the Children’s Act 38 of 2005 has any effect on this

(c) he is duly qualified to be admitted, with reference to the grounds in section 3(2)(a)

S 3(1)(b) Admission of Advocates Act

HIGH COURT MOTION PROCEDURE

A copy of the degree certificate or other documentary proof should be attached. If the applicant is not in possession of the required degree certificate due to his failure to pay tuition fees, this must be explained, and proof of any arrangement entered into with the institution to effect payment of the outstanding amount, must be provided: Practice Manual of the GNP, p 80

- (d) he is a South African citizen, or has permanent residence and is ordinarily resident in the Republic
S 3(1)(c) Admission of Advocates Act
A copy of the first page of the identity document or residence permit should be attached
- (e) if he previously was admitted or practiced as an attorney:
(i) that his name was removed from the roll of attorneys on his own application and
S 3(1)(d) Admission of Advocates Act
A copy of the order should be attached
(ii) a certificate from the relevant Law Society to the effect that in their opinion, he is a fit and proper person to practice must be attached
R 3A(1)(bA)
- (f) whether or not he has previously been struck off the roll of advocates or suspended from practice by the Court
R 3A(1)(b)(i)
- (g) he is a fit and proper person to practice, and in particular, that:
(i) he is not arraigned on a criminal charge and has not been convicted of a criminal offence
(ii) his estate has not been sequestered and no sequestration proceedings are pending
(iii) he was not found guilty in misconduct proceedings while in a previous profession or employment and that when any previous profession was relinquished or employment was terminated, no misconduct proceedings were pending, and
(iv) he is unaware of any fact which may detrimentally affect the adjudication of the application
S 3(1)(a) Admission of Advocates Act
If the applicant is unable to make any of these allegations, full details of the circumstances which preclude him from doing so must be furnished
Practice Manual of the GNP, p 80

A full disclosure of all material facts must be made and a failure to do so is a breach of good faith - *Ex parte Cassim* 1970 (4) SA 476 (T) at 477: Without in any way limiting this statement, it obviously applies particularly to the issue whether the applicant is a fit and proper person to be admitted as an advocate

Notice

The application and annexures thereto must be served at least 6 weeks prior to the hearing thereof, on:

- (a) the Registrar of the division to which the application will be made, and
- (b) the Secretary of the Bar Council or Society of Advocates of the division concerned

Rule 3A(1)

In the TPD and WLD, copies must be served on both Societies in Pretoria and Johannesburg

The Registrar should be provided with the original and a copy as the application is heard by two judges

Supplementary affidavits must forthwith be served on these parties

Order

The applicant will be admitted if the Court is satisfied that the applicant is a proper person to be allowed to practice and that he ranks no danger to the public or the good name of the profession

S v Mkhise, S v Jones, S v Le Roux 1988 (2) SA 868 (A) at 873E

Grant or refusal of the application is a matter in the Court's discretion

S v Mkhise supra at 873F

If the applicant is present in Court, he should be properly robed and after being admitted, will be called forward to take the prescribed oath

RELIEF SOUGHT IN NOTICE OF MOTION

That the applicant be admitted to practice and be authorised to be enrolled as an advocate of the High Court of South Africa

PRACTITIONER'S CHECKLIST

1. Application served with 6 weeks' notice on Secretary of Society
2. *Locus standi*
3. Jurisdiction
4. SA citizen or permanent residence and ordinarily resident in SA
5. Older than 21 and ID number
6. Duly qualified
7. Fit and proper:
 - 7.1 criminal charges
 - 7.2 sequestration
 - 7.3 misconduct proceedings
8. Never admitted as attorney, alternatively removed on own request
9. Certificate from Law Society confirming fit and proper
10. Never admitted as advocate, or if has – never struck off or suspended
11. Affidavit of attorney or Commissioner of Oaths confirming identity