

STELLENBOSCH UNIVERSITY STUDENT COURT RULES OF PROCEDURE



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

These Rules have been adopted by the Student Court, in consultation with the Student Representative Council, on **06 APRIL 2020** and approved by the Appeal Court on **08 APRIL 2020**, as required by section 68 of the Stellenbosch University Student Constitution, 2018.

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1 DEFINITIONS

In these Rules, unless the context otherwise indicates –

“Advisory Opinion” means an order sought in terms of section 66(4) of the Student Constitution.

“Appeal Court” means the Appeal Court constituted in terms of sections 71-74 of the Student Constitution.

“Calendar day” means any day, the period of 24 hours beginning at 00h00 and ending at the following 00h00, including Saturdays, Sundays, public holidays and University holidays.

“Chief Justice” means a Member of the Court designated as the chief presiding officer of the Court, so elected by the remaining members of the Court.

“Court day” means any day, beginning at 08h00 and ending at 17h00, other than a Saturday, Sunday, public holiday or University holiday.

“Court” means the Student Court constituted in terms of sections 58-70 of the Student Constitution.

“Courts” means the Student Court and the Appeal Court.

“Member of the Court” means Students appointed as members of the Court in accordance with the Student Constitution.

“Notice” means it has come to the attention of the recipient. Proof of successful delivery of an email also constitutes Notice within the meaning contemplated in this definition.

“Prima facie” means on the face of it.

“Representative” means a Student who, according to section 69 of the Student Constitution, has been appointed by a party to assist said party in the proceedings before the Court.

“Rules of Procedure” or **“Rules”** means these Rules which the Court has adopted in terms of section 68 of the Student Constitution.

“Student Constitution” means the Stellenbosch University Student Constitution, 2018.

“Student Representative Council” or **“SRC”** means the body constituted in terms of Chapter 3 of the Student Constitution.

“Student” means a Student, undergraduate or postgraduate, registered at the University.

“Tygerberg Student Council” or **“TSR”** means the body constituted by Chapter 11 of the Student Constitution.

“University holiday” means any day falling outside of the University terms as indicated in the formal University calendar, or as officially communicated by the University from time to time as the case may be.

“University” means Stellenbosch University.

“Written” or **“in writing”** means written electronic or physical communication.

2 SCOPE AND PURPOSE OF THE RULES

- (1) Pursuant to section 68 of the Student Constitution, the Court has the authority to adopt and enforce its own Rules of Procedure, with due consideration of the need for the Courts to be accessible and the principles of procedural fairness.
- (2) These Rules regulate the procedure in matters brought before the Courts.
- (3) The Rules shall be construed and administered to secure the just, speedy and inexpensive determination of a matter before the Courts.
- (4) These Rules may be departed from upon the showing of a just cause by any party or at the Courts’ discretion if it is in the interests of justice to do so.
- (5) Any submission that fails to comply with the Rules shall be dismissed for that reason.

3 SITTING OF THE COURT AND VACATIONS

- (1) Notice of the terms of the Court shall be published on the Court’s website, and shall also be available at the SRC and TSR offices.
- (2) The Court may publish the notice in sub rule (1) in any other manner.
- (3) If it is convenient for the majority of Members of the Court, the Court may sit at any place or time other than a time prescribed in terms of these Rules.

4 FILING OF DOCUMENTS

- (1) All parties must file the necessary documents with the Court in accordance with these Rules by addressing an email to the Court and all other parties to the matter carbon copied (“CC”) to that email.
- (2) A document is considered as filed for the purposes of Rule 4(1) when there has been Notice.

- (3) Any document filed at the Court without all other parties CC'd will be defective.
- (4) Any document filed after 17:00 on any calendar day will be deemed to have been filed at the start of the next Court day.
- (5) All parties must inform the Court of any other parties (other than the applicants and respondents) who may have a material interest in the proceedings when they file their first document with the Court.
- (6) All pleadings submitted to the Court must be signed by the party or that party's Representative.
- (7) By signing, the party or Representative confirms that he/she has read the document, and that there are legitimate grounds to support it.
- (8) All documents must be filed in English.

5 COMMENCEMENT OF AN APPLICATION TO THE COURT

- (1) Every application shall be in accordance with the forms provided for by the Court and shall be –
 - (a) brought via a Notice of Motion;
 - (b) supported by a Founding Affidavit.
- (2) Every Notice of Motion shall set out –
 - (a) the order that the applicant wishes the Court to grant;
 - (b) the full names of all the persons whose affidavits will support the motion;
 - (c) the time periods within which the respondent(s) are required to file a Notice of Intention to Oppose and Answering Affidavit(s) in accordance with Rule 7; and
 - (d) the applicant's preferred email address for service of documents related to the matter.
- (3) Every Founding Affidavit shall set out –
 - (a) the applicant's full name, student number and the capacity in which they approach the Court;
 - (b) the capacity in which the respondents are cited;
 - (c) whether each of the applicants and each of the cited respondents, if any, have standing before the Court with specific reference to section 67 of the Student Constitution;
 - (d) whether the Court has jurisdiction with specific reference to section 65 of the Student Constitution;

- (e) a short and concise statement of the facts surrounding the dispute, with each averment/allegation made in distinct paragraphs;
 - (f) a short and concise legal argument showing why the applicant is entitled to relief; and
 - (g) the relief sought with specific reference to section 66 of the Student Constitution.
- (4) If the Court is of the opinion that a party cited by the applicant should not be cited as either an applicant or respondent, because –
- (a) the cited party has no standing before the Court;
 - (b) the party cited has not evidenced their consent to be an applicant by means of a Founding Affidavit or Confirmatory Affidavit; or
 - (c) no *prima facie* case has been made out against the party cited as respondent,
- the Court will remove that party from the matter on notice to all the parties.

6 URGENCY

- (1) An applicant will explicitly set forth the circumstances which render the matter urgent, if at all, as well as the reasons why the applicant will be prejudiced if there is no deviation from the Rules.
- (2) If the Court deems the matter urgent, the Court may dispense with any of the Rules to the extent that is provided for in Rule 2(4), including condoning non-compliance with the Notice requirement in Rule 4(1).

7 RESPONSES TO AN APPLICATION

- (1) Within 3 (three) Court days of receiving the applicant's Notice of Motion and Founding Affidavit in terms of Rule 5(1), the respondents must file their Notice of Intention to Oppose.
- (2) Within 8 (eight) Court days of receiving the applicant's Notice of Motion and Founding Affidavit in terms of Rule 5(1), the respondents must file their Answering Affidavits.
- (3) Every Notice of Intention to Oppose shall set out –
 - (a) the respondent's intention to oppose; and
 - (b) their preferred email address for service of documents related to the matter.

- (4) Every Answering Affidavit shall set out –
 - (a) the respondent's full name, student number and the capacity in which they appear before the Court;
 - (b) which facts in the applicant's Founding Affidavit are disputed by the respondent, which facts are common cause, and any other material facts that are pertinent to the matter; and
 - (c) A short and concise statement of the respondent's legal argument.
- (5) In the event that there is more than one respondent, the respondents may elect to –
 - (a) file a Notice of Intention to oppose jointly; and/or
 - (b) file an Answering Affidavit jointly, or alternatively, file a Confirmatory Affidavit that supports the Answering Affidavit of another respondent.

8 REPLYING AFFIDAVIT

An applicant may file a Replying Affidavit within 3 (three) Court days of service of an Answering Affidavit if new facts were introduced in the Answering Affidavit.

9 FAILURE TO RESPOND

Any party that fails to file a response, or if such a response is disregarded in terms Rule 4(2), is deemed to have admitted to the facts averred by the applicant or respondent, as the case may be.

10 APPLICATION FOR EXTENSION

- (1) Any party to a matter may make written submissions to the Court requesting an extension of any time period in Rules 5 to 8, if they are of the view that they may be prejudiced by the time periods as they are.
- (2) A request in terms of sub-rule 10 must be –
 - (a) brought to the attention of all other parties by the party requesting the extension; and
 - (b) supported by the reasons for such an extension and the number of days of extension required.
- (3) The Court may approve or deny the request for extension and will notify all parties to the proceeding as to the decision and effect thereof on the forthcoming proceedings.

11 APPLICATION TO LITIGATE AGAINST MEMBERS OF THE COURT

- (1) If any person wishes to bring an application against a Member of the Court that person must first request permission, supported by reasons therefore, from the Dean of the Law Faculty to bring such an application.
- (2) The Dean of the Law Faculty may, if they are of the opinion that there are sufficient *prima facie* grounds, grant permission in writing to proceed with the application.
- (3) The applicant must attach proof of permission granted in sub-rule (2) to their Founding Affidavit. Failure to do so will result in the application being dismissed insofar as it relates to that member.
- (4) The member who is litigated against will not be a Member of the Court for the purposes of that matter.

12 RECUSAL OF MEMBERS AND APPLICATION TO REMOVE

- (1) Any Member of the Court may recuse themselves from deciding a matter, by Notice to the Chairperson, if they are of the opinion that they cannot conduct themselves impartially and without fear, favour or prejudice.
- (2) Any party to a matter may make application to the Court to have a Member of the Court removed from deciding a matter.

13 COMMISSIONING OF AFFIDAVITS

All affidavits filed at the Court must be signed in full and deposed to under oath or affirmation by the relevant party.

14 ADVISORY OPINIONS

A request for an Advisory Opinion shall be in the form of a Notice of Motion and shall, in plain and clear language with sufficient detail set forth –

- (a) the applicable and relevant provision; and
- (b) any question of law or potential conflict with other law.

15 HEARINGS

- (1) Proceedings shall take place in an open Court unless it is in the interests of the administration of justice or the request of one or more of the parties to the

matter for reasons considered sufficient by the Court, that the proceedings are to be held behind closed doors.

- (2) The Court has a discretion to request that the parties present oral argument at a hearing.
- (3) The date, time and venue of the hearing will be determined by the Court after consultation with all the parties.
- (4) The Chief Justice, or their nominated member of the Student Court –
 - (a) chairs the hearing and is empowered to ensure there is a forum for sensible, orderly and constructive debate;
 - (b) shall, more than 24 hours before the hearing, give Notice to all the parties to the dispute of –
 - (i) the rules of engagement; and
 - (ii) the proposed structure of the hearing; and
 - (c) may deviate from the rule or structure in sub-rule (4)(b)(ii) upon good cause shown by any of the parties at the hearing.
- (5) Hearings shall be conducted before a bench of all Members of the Court competent and able to serve on the bench at the time for that particular matter.

16 PRESENCE AT COURT HEARINGS

- (1) All parties shall be present at proceedings before the Court.
- (2) Pursuant to section 69 of the Student Constitution –
 - (a) any party before the Student Court may appear before the Court with or without representation; but
 - (b) only Students may act as Representatives before the Court.
- (3) A party shall notify the Court prior to the proceedings if he/she is unable to attend.
- (4) If a party fails to attend the hearing, the matter may proceed in the absence of the party.

17 APPEAL PROCEEDINGS

- (1) Any party who wishes to appeal any decision by the Court shall notify the Court, the Dean of the Law Faculty of the University, and all other parties to the dispute within 5 (five) Court days of the Court's decision having been communicated to the parties.

- (2) The Appellant's Notice of Appeal must –
 - (a) state what part of the judgment or order is appealed against; and
 - (b) state the particular respect in which the variation of the judgment or order is sought.
- (3) The Respondents to the appeal may file a Cross-Appeal with the Court, the Dean of the Law Faculty of the University, and all other parties to the dispute within 5 (five) Court days of receiving the Notice of Appeal.
- (4) The Appeal Court will only decide the appeal on the basis of the documents filed and the Court's judgment or order.