



YOU HAVE BEEN SERVED WITH A SUMMONS, WHAT IS YOUR NEXT STEP?

1 Introduction

A civil Summons can be defined as a legal notice, which sets out the legal claim wherefore a Plaintiff institutes action against a Defendant.¹ A Summons is regarded as the first step in the litigation process, and is served on a Defendant by the Sheriff, once it has been issued at the applicable Magistrate's Court, Regional Court or High Court.

2 Timeline for Defending a Summons

Once a Summons is served, it is paramount for the Defendant to contact a legal practitioner in order to receive the correct legal advice regarding the options available to the Defendant and the importance of defending the matter. If the Defendant decides to defend the matter, a Notice of Intention to Defend must be served by the Defendant, personally or through his attorney, on the Plaintiff's attorney within a specific timeframe. A Notice of Intention to Defend is a formal document which informs the Plaintiff and the Court of the Defendant's intention to dispute the claim against him. The timeline of the serving and filing of a Notice of Intention to Defend is contained in South African legislation and is set out in paragraph 3 below.

If the Defendant fails to deliver a Notice of Intention to Defend, the Plaintiff may proceed with a Request for Default Judgment against the Defendant. Once Judgment

¹ Barter H. *Understanding Summons in South Africa: A Complete Guide*.
<https://www.bartermckellar.law/litigation-explained/what-is-a-summons>.

is obtained against a Defendant, the Defendant will be classified as a Judgment Debtor. the Judgment is recorded on the person's credit report and is detrimental to his or her credit rating. Furthermore, if the Judgment Debtor fails to pay the Judgment amount, the Plaintiff may proceed with execution steps against the Debtor which may lead to the attachment of the assets of the Debtor.²

3 Applicable Legislation

Section 13(1) of the Magistrates' Courts Rules³ states:

“The defendant in every civil action shall be allowed 10 days after service of summons on defendant within which to deliver a notice of intention to defend, either personally or through defendant's attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.”

Section 19(1) of the Uniform Rules of Court⁴ states:

“Subject to the provisions of section 24 of the Act, the defendant in every civil action shall be allowed 10 days, after service of summons on such defendant, within which to deliver a notice of intention to defend, either personally or through an attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.”

The 10 days stipulated in the above legislation are referred to as court days. A court day is defined as any day other than a Saturday, Sunday or Public Holiday.⁵ In the computation of the timeframe of the above rules, only court days are included.⁶

4 Conclusion

² Robinson S. *Default Judgment: The Consequence of Ignoring a Summons* 2023.
<https://www.mfp.co.za/credit-law/default-judgment-the-consequence-of-ignoring-a-summons/>.

³ Rules Regulating the Conduct and Proceedings of the Magistrates' Courts of South Africa.

⁴ Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa.

⁵ Donal Patrick Hoban v Absa Bank Limited and Others 1999 ZASCA 12 para 6.

⁶ Donal Patrick Hoban v Absa Bank Limited and Others 1999 ZASCA 12 para 6.

Being served with a Summons can be a daunting and overwhelming experience. The applicable timeline relating to defending a matter by serving and filing a Notice of Intention to Defend, as set out above, might seem complex, and if neglected, can result in Default Judgement being granted against a Defendant.

Thankfully, Malan Lourens Viljoen Inc. and its dedicated team in its Litigation Department will gladly assist you in the event where a Sheriff shows up at your doorstep with a Summons in hand.

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