

## Supreme Court Bail Review Rules 1985

The Supreme Court Bail Review Rules 1985 dated 5<sup>th</sup> August, 1985, came into operation on 15<sup>th</sup> August, 1985 (*South Australian Government Gazette*, 15 August, 1985, p. 409), and have been amended as follows:

		<i>Gazette</i>	<i>Date of Operation</i>
#1	29 June 1990	12 July 1990, p. 267	12 July 1990
#2	30 July 2007	30 August 2007, p. 3545	1 September 2007
#3	15 December 2010	27 January 2011, p. 284	1 February 2011
#4	<b>29 July 2013</b>	<b>29 August 2013, p. 3624</b>	<b>1 October 2013</b>

- 1 These Rules may be cited as the “Supreme Court Bail Review Rules 1985”.
- 2 For the purpose of these Rules:
  - (1) “The Act” means the *Bail Act, 1985*, as amended, from time to time.  
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- 3 An application for a review under Section 14(2)(a) of the Act shall be initiated by filing with the Deputy Registrar (Criminal) a summons in duplicate in the form in the Schedule hereto.
- 4 Except with the leave of the Court the applicant for a review shall not use any affidavit on the hearing of the review unless it has been filed with the Deputy Registrar (Criminal) at the time of the filing of the summons.
- 5 As soon as practicable after the filing of the summons the Deputy Registrar (Criminal) shall indorse thereon the time and the place for the hearing of the review and return the duplicate copy to the persons filing the same.
- 6 Unless the Deputy Registrar (Criminal) before returning the indorsed duplicate summons pursuant to Rule 5 shall indorse thereon that the applicant is to effect service thereof on any person, the Deputy Registrar (Criminal) will cause copies of the summons and any affidavit lodged therewith by the applicant to be served on:
  - (1) The parties to the proceedings in which the bail order was made or refused other than the applicant.
  - (2) The Clerk of the Court, which was the bail authority which made the order for which the review is sought, or, if that order was not made by a Court, on the bail authority who made the decision for which the review is sought.
  - (3) Any other person to whom the summons is directed provided that the Deputy Registrar (Criminal) shall consider that person to be an interested party.
- 7 Service under Rule 6 need not be personal service, but shall be by such means as shall bring the application for the review to the attention of the person to be served as soon as practicable provided that on the hearing of the review if he sees fit the Judge may direct further service.
- 8 If the Deputy Registrar (Criminal) indorses the summons pursuant to Rule 6 that the applicant shall serve any person, the applicant shall thereupon serve the summons and any affidavit filed by him in support thereof on such person and by such means as shall bring the application for review to the attention of that person as soon as

practicable provided that on the hearing of the review if he sees fit the Judge may direct further service.

- 9** Upon the service of a summons for review upon a Clerk of a Court or a bail authority such person shall forthwith send to the Deputy Registrar (Criminal) his file and all of the other papers relevant to the review, including the reasons under Section 12(1) of the Act, together with his certificate that such file and other papers are those relevant to the review.
- 10** Subject to Rule 10A, an application for review under Section 14 of the Act shall be heard in open Court unless the Court otherwise directs and unless the Judge thinks it proper to allow oral evidence to be given all of the evidence shall be given by affidavit.
- 10A**
- (1) Subject to subrule (2) and to any contrary direction by the Court, persons in custody will appear by audio visual link on bail applications and bail reviews;
  - (2) A party to an application for bail or a review of bail under s 14(2)(a) of the Act who objects to the use of an audio visual link for the hearing of that application must give notice of that objection in writing in the application for bail or summons for review of bail or, at least three business days before the hearing, file a notice of objection using Form 24 in the Schedule to the Supreme Court Criminal Rules 1992. A notice of objection may be determined, at the discretion of the Court, by a Judge at a hearing in Court at which the person in custody is present, or in chambers without the Judge hearing from any party, or at a hearing using an audio visual link (whether that be the hearing of the application for bail or review of bail or some other hearing).
  - (3) It may be necessary for counsel during the course of a hearing by audio visual link to take instructions on a matter which could not reasonably have been anticipated. In that event counsel will be provided with access to a private telephone which will link directly to the audio visual link facility at the custodial institution in which the person in custody is held.

### **10B—Recording Events in Court**

[Rule 10B inserted by Supreme Court Bail Review Rules 1985 (Amendment No. 4)]

- (1) Subject to this rule and to any contrary direction of the Court, the making of a record of persons, things, or events in court is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1):
  - (a) a party to a proceeding which is being heard by the Court, a legal practitioner, law clerk, student or a bona fide member of the media may make a handwritten or electronic note of persons, things or events in court; and
  - (b) a bona fide member of the media may make an audio recording of proceedings for the sole purpose of verifying notes and for no other purpose.
- (4) Any record made in court permitted by this Rule must:
  - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;

- (b) not interfere with the Court’s sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) Any audio recording made by a member of the media under subrule (3)(b):
- (a) must not record any private conversation occurring in court;
  - (b) must not be made available to any other person or used for any other purpose; and
  - (c) must be erased entirely within 48 hours of the recording.
- (6) For the purpose of this Rule, “record” means a record by any means whatsoever, including by handwriting, other physical means, audio and/or visual recording or electronic record.

**10C—Electronic Communications to and from Court Rooms**

[Rule 10C inserted by Supreme Court Bail Review Rules 1985 (Amendment No. 4)]

- (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.
  - (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
  - (3) Despite subrule (1) and subject to subrules (4) and (5), a party to a proceeding which is being heard by the Court, a legal practitioner or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.
  - (4) Any electronic communication permitted by this Rule must:
    - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
    - (b) not interfere with the Court’s sound system or other technology; and
    - (c) not generate sound or require speaking into a device.
  - (5) A communication of evidence adduced or a submission made in proceedings, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Court has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.
  - (6) For the purpose of this rule, “electronic device” means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).
- 11** Subject to Section 16 of the Act an application for review shall not operate as a stay of proceedings unless the Court so orders.
- 12** Where upon a review the Court admits a person to bail it may direct that the Deputy Registrar (Criminal), or some other officer of the Court, may take the bail agreement in the terms ordered and thereupon release the applicant on bail.
- 13** Upon the completion of a review, and of any appeal against that review or of the time for the institution of any such appeal, the Deputy Registrar (Criminal) may return any papers received by him pursuant to Rule 9 above to the person who

forwarded them to him except such papers as may be required for the purposes of the records of this Court.

- 14** No fees shall be payable to the Court for any process or orders relating to a review.
- 15** (1) These Rules and the Schedule shall also apply *mutatis mutandis* to a review under Section 15a of the Act of a Magistrate’s review of a decision of a bail authority and an application for leave under subsection 15a(3).
- (2) In proceedings under Rule 15(1):
- (a) Service under Rule 6 shall be upon both the bail authority whose order was reviewed by the Magistrate and upon the Magistrate;
  - (b) Rule 9 shall apply also to the Magistrate whose decision is under review.

### THE SCHEDULE

SOUTH AUSTRALIA – IN THE SUPREME COURT. No. B.R. of 20 . IN THE MATTER of a review under Section 14(2)(a) of the *Bail Act, 1985*, BETWEEN  
.....Applicant and .....Respondent

### SUMMONS FOR REVIEW

Let all persons interested attend before the Supreme Court of South Australia on the hearing of an application by the applicant under Section 14(2)(a) of the *Bail Act, 1985*, for a review of the bail order set out below.

### PARTICULARS (to be completed by the applicant)

1. The full name and address of the applicant is.....
2. The full name and address of the bail authority whose order is complained of is  
.....
3. The full names and addresses of all parties other than the applicant to the proceedings in which the bail order was made are  
.....
4. The charge/charges which gave rise to those proceedings are .....
5. The whole of the terms of the bail order made by the bail authority are  
.....
6. The date and place when such order was made are .....
7. If the whole of the order is not complained of, the parts complained of are  
.....
8. The evidence to be relied upon by the applicant on the review is the affidavits of  
.....
9. The grounds relied upon by the applicant are.....
10. The persons who are interested in the review and who should be served with this summons are .....
11. The address for service of the applicant for any documents to be served in these proceedings is .....
12. (Applicable only in those cases in which the applicant is the person in custody and the applicant wishes to appear in Court personally rather than by audio visual link).  
The applicant objects to appearing by audio visual link at the hearing of the

application. The grounds of objection relied upon by the applicant are:

.....  
.....  
.....

.....  
(Signed by the applicant or his solicitor)

TAKE NOTICE the review will be heard before a Judge on.....day the.....day  
of.....20....at.....a.m./p.m. in the Sir Samuel Way Building, Victoria Square,  
Adelaide. The applicant and all persons served with this summons are required then to attend  
if they wish to be heard on the review and in their absence the Court may make such order as  
it sees fit. The applicant is required to serve this summons  
upon.....

Dated.....20 .

.....  
Deputy Registrar (Criminal)

## History of Amendment

<b>Rules</b>	<b>Amendments</b>	<b>Date of Operation</b>
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
<b>10B</b>	<b>ins am4</b>	<b>1-Oct-13</b>
<b>10C</b>	<b>ins am4</b>	<b>1-Oct-13</b>