

No. R. 518

8 May 2009

**AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE
PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE
HIGH COURT OF SOUTH AFRICA**

The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Expressions in bold type in square brackets indicate omissions from existing rules.

____ Expressions underlined with a solid line indicate insertions into existing rules.

Definitions

1. In these rules "the Rules" means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa published under Government Notice No. R.48 of 12 January 1965, as amended by Government Notices Nos. 235 of 18 February 1966, R.2004 of 15 December 1967, R.3553 of 17 October 1969, R.2021 of 5 November 1971, R.1985 of 3 November 1972, R.480 of 30 March 1973, R.639 of 4 April 1975, R.1816 of 8 October 1976, R.1975 of 29 October 1976, R.2477 of 17 December 1976, R.2365 of 18 November 1977, R.1546 of 28 July 1978, R.1577 of 20 July 1979, R.1535 of 25 July 1980, R.2527 of 5 December 1980, R.500 of 12 March 1982, R.773 of 23 April 1982, R.775 of 23 April 1982, R.1873 of 3 September 1982, R.2171 of 6 October 1982, R.645 of 25 March 1983, R.841 of 22 April 1983, R.1077 of 20 May 1983, R.1996 of 7 September 1984, R.2094 of 13 September 1985, R.810 of 2 May 1986, R.2164 of 2 October 1987, R.2642 of 27 November 1987, R.1421 of 15 July 1988, R.210 of 10 February 1989, R.608 of

31 March 1989, R.2628 of 1 December 1989, R.185 of 2 February 1990, R.1929 of 10 August 1990, R.1262 of 30 May 1991, R.2410 of 30 September 1991, R.2845 of 29 November 1991, R.406 of 7 February 1992, R.1883 of 3 July 1992, R.109 of 22 January 1993, R.960 of 28 May 1993, R.974 of 1 June 1993, R.1356 of 30 July 1993, R.1843 of 1 October 1993, R.2365 of 10 December 1993, R.2529 of 31 December 1993, R.181 of 28 January 1994, R.411 of 11 March 1994, R.873 of 31 May 1996, R.1063 of 28 June 1996, R.1557 of 20 September 1996, R.1746 of 25 October 1996, R.2047 of 13 December 1996, R.417 of 14 March 1997, R.491 of 27 March 1997, R.700 of 16 May 1997, R.798 of 13 June 1997, R.1352 of 10 October 1997, R.785 of 5 June 1998, R.881 of 26 June 1998, R.1024 of 7 August 1998, 1723 of 30 December 1998, R.315 of 12 March 1999, R.568 of 30 April 1999, R.1084 of 10 September 1999, R.1299 of 29 October 1999, R.502 of 19 May 2000, R.849 of August 2000, R.373 of 30 April 2001, R.1088 of 26 October 2001, R.1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008 and R. 1345 of 12 December 2008.

Substitution of heading of rule 49 of the Rules

2. The following heading is hereby substituted for the heading to rule 49 of the Rules:

“Civil Appeals from the High Court”

Substitution of rule 49A of the Rules

3. The following rule is hereby substituted for rule 49A of the Rules:

“49A Criminal Appeals to the Full Court

(1) (a) Within 10 days of leave to appeal being granted in terms of sections 316 up to and including 319 of the Criminal Procedure Act 51 of 1977, the appellant shall deliver to the registrar and the director of public prosecutions concerned, a notice containing the full residential and postal address of the appellant and the address of his or her legal representative.

(b) In the case of an appeal in terms of section 315(3) of the Criminal Procedure Act 51 of 1977 to the full court, the registrar shall, subject to the provisions of section 316(5)(b) of the said Act, prepare three additional copies of the case record or parts thereof, as the case may be, and shall furnish the State with the number it requires and, on payment of the prescribed fee, shall furnish the appellant with the number he or she requires: Provided that if the registrar is of the opinion that the appellant is too poor to pay the

prescribed fee, such copies may be furnished without payment of any fee, in which case the registrar's decision shall be final.

(c) (i) In the case of an appeal against the judgment or order of the court of the Witwatersrand Local Division, the judge president of the Transvaal Provincial Division shall determine whether the appeal should be heard by the full court of the said local division.

(ii) If the judge president has directed that the appeal should be heard by the full court of the Witwatersrand Local Division the registrar of the said local division shall immediately inform the director of public prosecutions and the appellant or his or her legal representative.

(iii) If the judge president has not so directed, the registrar shall inform the registrar of the provincial division as well as the director of public prosecutions and the appellant or his or her legal representative accordingly.

(2)(a) Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The written argument contemplated in paragraph (a) shall contain references to the record and to the authorities relied upon in support of each point, together with a list of such authorities.

(c) In each case, four copies of the written argument shall simultaneously be filed with the registrar.

(3) The appeal shall be set down by the registrar of the court where the appeal is to be heard on a date assigned by him or her with written notice to the director of public prosecutions and the appellant or his or her legal representative.

(4) The ultimate responsibility for ensuring that all copies of the record on appeal and all the necessary exhibits are in all respects properly before the court shall rest on the appellant or his or her attorney: Provided that where the appellant is not represented by an attorney, such responsibility shall rest on the director of public prosecutions."

Substitution of rule 51 of the Rules

4. The following rule is hereby substituted for Rule 51 of the Rules:

"51 Criminal Appeals from Magistrates' Courts

(1) An appeal by a convicted person against a conviction, sentence or order made by a magistrate's court in a criminal matter, or an appeal by the director of public prosecutions or other prosecutor against a dismissal of a summons or charge or other decision of a magistrate's court in such a matter, shall be set down by the director of public prosecutions or registrar on notice to the appellant or his or her legal representative for hearing on such day as the judge president may appoint for such matters.

(2) Notwithstanding anything to the contrary in any rule contained, a notice may be served on an appellant or his or her legal representative by sending it by registered post, addressed to the appellant or his or her legal representative at an address appearing on the notice of appeal or at an address which the appellant or his or her legal representative has subsequently furnished to the registrar in writing.

(3) The ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant or his or her legal representative: Provided that where the appellant is not represented by a legal representative, such responsibility shall rest on the director of public prosecutions.

(4)(a) Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The provisions of rule 49A(2)(b) and (c) shall apply *mutatis mutandis* to the written argument.

(5) (a) Notice in terms of section 309C(9) of the Criminal Procedure Act 51 of 1977 shall be given by the registrar at least 10 days before the date fixed for the hearing of any of the applications referred to in section 309C, unless the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her have agreed to a shorter period, and shall correspond substantially to Form 25.

- (b) The notice referred to in paragraph (a) shall –
- (i) be handed to the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar; or
 - (ii) be sent by registered post.”.

Substitution of rule 52 of the Rules

5. The following rule is hereby substituted for Rule 52 of the Rules:

“52 Criminal Appeals to the Supreme Court of Appeal

(1) Whenever-

- (a) an appellant has been granted leave to appeal in terms of section 316 of the Criminal Procedure Act 51 of 1977;
- (b) an appellant has noted an appeal in terms of section 318 of the said Act; or
- (c) a court has reserved a question of law arising on the trial of an appellant in terms of section 319 of the said Act –
 - (i) the registrar of the court which tried the appellant shall lodge with the registrar of the Supreme Court of Appeal six copies of the record (one of which shall be certified by the first-named registrar) of the proceedings in the trial court and deliver such number of copies to the State as may be considered necessary: Provided that instead of the whole record, with the consent of the appellant and the State, copies (one of which shall be certified by the first-named registrar) may be transmitted of such parts of the record as may be agreed upon by the appellant and the State to be sufficient, in which event the Supreme Court of Appeal may nevertheless call for copies of the whole record;
 - (ii) the appellant may, on payment of the prescribed fees, obtain from the registrar of the court which tried the appellant such number of copies of the record or parts of the record (as the case may be) as may be necessary for his or her purpose: Provided that if the appellant is unable by reason of poverty to pay the

prescribed fees the appellant shall be entitled to obtain the same without payment of any fees.

(2) Any question arising as to the appellant's inability to pay the prescribed fees shall be decided by the registrar of the court which tried the appellant, in which case the registrar's decision shall be final.

(3) The words 'the registrar of the court which tried the appellant' shall mean, where the trial court was a Circuit Local Division, the registrar of the division of the High Court in whose custody the records of the Circuit Court Division concerned are lodged."

Substitution of Form 25 of the First Schedule to the Rules

6. The following form is hereby substituted for form 25 of the First Schedule to the Rules:

"FORM 25

NOTICE IN TERMS OF SECTION 309C (9) OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977

In the High Court of South Africa

(.....) Division

CASE NO. (HIGH COURT)

CASE NO.(LOWER COURT) HELD AT.....(LOWER COURT)

THE STATE vs

CHARGE:

TO THE DIRECTOR OF PUBLIC PROSECUTIONS, OR PERSON DESIGNATED BY
HIM OR HER,

AND TO THE APPELLANT,

TAKE NOTICE THAT the application by the appellant –

- * for condonation referred to in the proviso to section 309(2) or referred to in section 309B(1)(b)(ii) of the Criminal Procedure Act 51 of 1977; or
- * for leave to appeal referred to in section 309B(1)(a) of the Act; or

* to adduce further evidence referred to in section 309B(5)(a) of the Act,
has been set down for hearing on (date) at (time) or as soon
thereafter as the matter may be heard.

THE matter will be heard at.....(place).

TO THE DIRECTOR OF PUBLIC PROSECUTIONS OR DESIGNATED PERSON

.....
.....

(Address)

AND TO THE APPELLANT,.....

.....
.....

(Address)

OR TO:

.....
.....

(Address of appellant's legal representative, if any)

REGISTRAR OF THE HIGH COURT,

* Delete what is not applicable".

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE IN TERMS OF SECTION 309C(9) OF THE CRIMINAL PROCEDURE ACT, 1977

Receipt of the above-mentioned notice is hereby acknowledged.

FOR DIRECTOR OF PUBLIC PROSECUTIONS OR PERSON DESIGNATED BY HIM
OR HER... .. (Signature)

.....(Name in print)

FOR APPELLANT.....(Signature)

.....(Name in print)".

Commencement

7. These rules shall come into operation on **15 June 2009**.