ANNEXURE B

RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

DRAFT AMENDED MAGISTRATES' COURTS RULES

GENERAL: EXPLANATORY NOTE:

[ ]	Expressions in bold type in square brackets represent omissions from existing rules
_____	Expressions underlined with a solid line represent insertions into existing rules

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2 Definitions

(1) In these rules and in the forms annexed hereto any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context otherwise indicates-

'apply' means apply on motion and **'application'** has a corresponding meaning;

'clerk of the court' means a clerk of the court appointed under section 13 of the Act and includes an assistant clerk of the court so appointed;

'Consumer Protection Act, 2008' means the Consumer Protection Act, 2008 (Act 68 of 2008);

'**conventional method**' means the method for the filing, service and lodging of court processes, pleadings, notices or other documents, the administration of court case files and the hearing of cases, in use prior to the coming into operation of the e-justice system;

'Criminal Procedure Act, 1977' means the Criminal Procedure Act, 1977 (Act 51 of 1977);

'default judgment' means a judgment entered or given in the absence of the party against whom it is made;

['deliver' (except when a summons is served on the opposite party only, and in rule 9) means to file with the registrar or clerk of the court and serve a copy on the opposite party either by hand-delivery, registered post, or, where agreed between the parties or

so ordered by court, by facsimile or electronic mail (in which instance Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 will apply), and

'**deliver**' means to serve copies on all parties and file the original with the registrar or clerk of the court, either through the e-justice system or the conventional method and 'delivery', 'delivered' and 'delivering' have corresponding meanings;

'Divorce Act, 1979' means the Divorce Act, 1979 (Act 70 of 1979);

document' means

Two possible definitions of 'document' may be considered: OPTION 1 **document**' means any written, printed or electronic matter including data and data messages as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); OR OPTION 2 **document**' means any written, printed or electronic matter including pleadings and notices and data and data messages as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

'**e-justice system**' means the electronic service or delivery of documents, the administration of case files and the hearing of cases as provided for in these rules;

'**electronic**' means technology which has electrical, digital, magnetic, wireless, optical, electromagnetic or other intangible form or similar capabilities;

'**electronic communication**' means a communication by means of data or data messages as provided for in the Electronic Communications and Transactions Act, 2002;

'Electronic Communications and Transactions Act, 2002' means the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);

electronic mail address' means an address to or from which a data message is sent or received;

'give security' includes the giving of a security bond either by the party with someone as his surety or by two or more other persons;

'**hard copy**' means information set forth in paper form and '**hard copies**' shall have corresponding meanings;

'**hyperlink**' means a key word or reference in a text providing a link to another text to expound on the key word or reference;

'National Credit Act, 2005' means the National Credit Act, 2005 (Act 34 of 2005);

'notice' means notice in writing;

'**PDF**' means a portable document format, being a file format that preserves the exact format including the font or colour of any source document, irrespective of the application platform used;

'pending case' means a case in which summons or notice of motion has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been entered or given;

'plaintiff', **'defendant'**, '**applicant'**, **'respondent'** and **'party'** include the attorney or counsel appearing for any such party and the officer of any local authority nominated by it for the purpose;

'**registered user**' means a person or entity who has registered to use the e-justice system;

'registrar of the court' means a registrar of the court appointed under section 13A of the Act and includes an assistant registrar of the court so appointed;

'**service desk**' means a service point under the control of the clerk or registrar to assist litigants to file and deliver or access documents on the e-justice system;

'sheriff', means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act 90 of 1986), and also a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

'**sign**' means affixing or appending a signature including an electronic signature comprising the initial or name of the person signing, in any font, style or size which is intended by the person to authenticate a document and includes an advanced electronic signature as provided for in the Electronic Communications and Transactions Act, 2002 (Act No.25 of 2002) and 'signed' has a corresponding meaning;

'the Act' means the Magistrates' Courts Act, 1944 (Act 32 of 1944).

(2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as part of any period calculated in terms of these Rules.

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

2A E-Justice system

Application

(1)(*a)* Except where the conventional method is permitted, the e-justice system shall apply to—

(i) the issue of summonses and applications;

(ii) service of documents subject to the provisions of rule 9(9)(a)

(iii) the filing of documents and lodging of records; and

(iv) the adjudication of cases as provided for in these rules.

Note:

Trial procedures are contemplated but the rules have not at this stage been prepared, comments are requested as to changes required for the rules to better/further accommodate trials through the e-justice system.

Responsibilities of registered user

(2) Every registered user shall—

(a) maintain an electronic mail address for the duration of registration on the e-justice system;

(b) maintain accurate contact information for the duration of registration on the e-justice system;

(c) update the e-justice system within five days of any change in the information provided at registration.

(d) verify document legibility and orientation before submitting the document on the e-justice system.

Agree to receive

(3)(*a)* Every registered user agrees to receive processes, notices, court orders and other documents from other registered users and the registrar or clerk of the court only in respect of the matters to which the registered user is a party or is on record.

(b) Whenever a court process, notice, or court order is required to be served on a registered user, service at the electronic mail address of such registered user on the e-justice system shall be deemed to be such registered user's electronic mail address.

(c) The registrar, clerk of the court or the court may send notices, orders and other documents to a registered user via the e-justice system.

Format and content of documents

(4)*(a)* Only PDF format documents may be uploaded on the e-justice system.

(b) Documents uploaded on the e-justice system must–

(i) be formatted in compliance with the Rules governing formatting of hard copies *of* documents, including page limits and font style and size;

(ii) not be locked or otherwise password protected;

(iii) comply with the maximum file size permitted by the e-justice system; and

(iv) be of sufficient quality to ensure legibility.

(c) Attachments and exhibits such as physical exhibits and demonstrative evidence, which cannot be filed in PDF format, shall be filed by the conventional method or be filed in a format as directed by the court.

(d) Where an attachment or exhibit is filed in terms of paragraph (c), a document listing the attachments or exhibits must be filed on the e-justice system.

Hyperlinks

(5)(a) Hyperlinks and other electronic navigational aids may be included in a document as an aid to the court.

(b) Each hyperlink must contain a text reference to the source of the link.

(c) Hyperlinks may be used to provide an electronic link to other portions of the same document or other portions of the court file.

(d) Hyperlinks to cited authorities shall not replace the standard citation format for statutes, judgments, rules or other *cited* material where such standard citation is required.

(e) No hyperlinks shall be included in pleadings.

Original documents

(6)*(a)* Whenever a party is required to file an original hard copy document, the original document must be scanned, converted to PDF format and uploaded onto the e-justice system.

(b) A party who files a document in the court through the e-justice system must keep in his or her custody and control the original hard copy of that process, notice or document and must produce them to the court on being required by the court to do so.

(c) The document filed and kept must be available to the court for the duration of the matter in which it has been filed and must be kept until the case is considered finalised in terms of these Rules.

*(*d) Any document that is filed or submitted for filing in hard copy and subsequently uploaded onto the e-justice system shall be the official court record of the hard copy document, and it shall not be necessary for such hard copy document to be maintained or retained by the court.

Document size

(7) Documents larger than the maximum permitted size indicated by the e-justice system may be submitted for filing if they are divided into separate segments, each of which complies with the e-justice system size restrictions.

Documents other than text

(8) Documents which consist of images beyond text shall be scanned at sufficient resolution to ensure a legible and accurate representation of the image.

Exhibits

(9)*(a)* Where parties agree on exhibits to be tendered in evidence at a trial or hearing, such exhibits shall be marked and filed on the e-justice system, except where the conventional method is required to be used.

(b) Exhibits tendered at trials or hearings and which can be maintained in an electronic format, shall be maintained in such format for the purposes of the court record.

Pending cases

(10)*(a)* Cases that commenced prior to the coming into operation of the e-justice system shall continue in the conventional method to their completion unless directed otherwise by the court or presiding officer.

(b) If so directed, each party shall be responsible for scanning to PDF format and uploading onto the e-justice system the hard copy documents delivered by such party.

Time periods for delivery of documents

(11)(a)The time periods prescribed for delivery and lodging of documents by the conventional method shall apply to electronic delivery and lodging

(b) Documents filed on the e-justice system must be filed within the hours permitted by the conventional method, failing which the document shall be considered to have been filed on the next court day.

Technical problems

(13)*(a)* If a technical problem with the e-justice system prevents the uploading or delivery of a document on a particular day then the following rules shall apply:

(i) The registered user must deliver the document using the conventional method.

(ii) Once the document is delivered, the registered user must file the document onto the e-justice system on the day following resolution of the technical problem.

Date and time notifications

(14)(*a)* A date and time notification shall be provided to the party or registered user in respect of the delivery or filing of a document, excluding documents initiating process, to the e-justice system immediately after such delivery or filing.

(b) Delivery or filing shall be deemed to have taken place when the e-justice system generates a notification in terms of paragraph (a)

(c) If a document is rejected the e-justice system shall provide the party or registered user with a notification of the rejection.

Technically non-compliant documents

(15)*(a)* The registrar or clerk of the court may reject any document filed if such document does not comply with rule 1A.

(b) Where a document is rejected, the registrar or clerk of the court must within five days notify the registered user of the fact by sending a notice which will record the rejection and the reason therefor

(c) A registered user must within five days, resubmit the correctly formatted document

(d) This rule does not extend or vary the time limits prescribed in the rules.

Hearing of matters via the e-justice system

(16) All matters issued on the e-justice system may be heard via the e-justice system as directed by a presiding officer unless a court directs otherwise.

Note:

Trial procedures are contemplated but the rules have not at this stage been prepared, so as to first assess the capacity of the system. It is envisaged therefore that subrule (16) will then be amended to refer to "all matters issued via the e-justice system".

Service Desk

(17)*(a)* Officials at a service desk shall assist litigants who are not registered users –

(i) with the scanning and converting of a hard copy summons or other process to PDF for issuing by the registrar or clerk of the court of the court;

(ii) with the filing of a hard copy document by scanning and converting the document to PDF and uploading the document under the respective case number;

(iii) with the service of a document (excluding documents initiating process) on a registered user by scanning and converting the document to PDF and filing the document under the respective case number;

(iv) by explaining how the e-justice system operates and that registration is not mandatory;

(v) by assisting with the registration of a litigant who applies for registration on the e-justice system;

(vi) by assisting with requests for access to a court files, including, where requested, copies of documents, or transmission of documents to an electronic mail address or external device; and

(vii) any other services or assistance required relating to the e-justice system.

Confidential documents

(18)*(a)* The confidentiality of an electronic record or a document therein shall be dealt with the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.

(b) If a registered user seeks court approval to seal a document, the registered user may file the document electronically under temporary seal pending court approval of the registered user's motion to seal.

3 Duties and office hours of registrars and clerks of the court in civil matters

(1) The registrar or clerk of the court shall sign **[(manually or by machining a facsimile of his or her signature)]** and issue all such process of the court as may be sued out by any person entitled thereto or, at the request of any party by whom process was sued out, to reissue such process after its return by the sheriff.

(2) The first document filed in any action or application not relating to a then pending case shall be numbered by the registrar or clerk of the court with a unique reference number and a consecutive case number for the year during which it is filed.

(3) Every document that has been served or delivered in an action or application referred to in subrule (2) or in any subsequent matter in continuation of any such action or application shall be marked with the relevant unique reference number and consecutive case number by the party delivering it and shall not be received by the registrar or clerk of the court until so marked.

(4) (a) All documents delivered in the conventional method to the registrar or clerk of the court to be filed and any minutes made by the court on paper shall be filed under the unique reference number of the respective action or application.

(b) The registrar or clerk must scan and convert the document or minute to PDF and upload the document under the respective unique reference number on the e-justice system.

(5) Copies of the documents referred to in sub-rule (4) may be made by any person in the presence of the registrar or clerk of the court.

(6) The registrar or clerk of the court shall notify the plaintiff forthwith in writing or through the e-justice system of-

(a) the defendant's consent to judgment before the filing of any notice of intention to defend;

(b) a defective memorandum of notice of intention to defend by a defendant who is not represented by an attorney and in what respect such notice is defective as envisaged by rule 12(2)(a); and

(c) a request for a judgment by default having been refused.

(7)(a) The registrar or clerk of the court shall note on a certified copy of a judgment at the request of the party to whom such copy is issued-

(i) particulars of any other judgment by the court or any other court, stating the relevant court in that case; and

(ii) any costs incurred after judgment and payable by the judgment debtor.

(b) A second or further certified copy of a judgment may be issued upon the filing of an affidavit confirming the loss of the certified copy of a judgment which it is intended to replace.

(8) The registrar or clerk of the court shall assist litigants by explaining these rules of procedure, including aspects pertaining to the e-justice system as well as registration on such a system, and providing such further assistance as is reasonably possible in accordance with section 9(6)(b)(ii) of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008).

(9) .....

(10) Any act to be performed or notice to be signed by the registrar or clerk of the court in terms of these Rules may be performed or signed by a judicial officer, provided that no judicial officer shall write out any affidavit, pleading or process for any party or tax any bill of costs.

(11) When a court imposes upon a person any fine such person shall forthwith pay such fine to the registrar or clerk of the court.

(12) Except on Saturdays, Sundays and public holidays, the offices of the registrar or clerk of the court shall be open from 8:00 to 13:00 and from 14:00 to 16:00, save that, for the purpose of issuing any process or filing any document, other than a notice of intention to defend, the offices shall be open from 8:00 to 13:00, and from 14:00 to 15:00: Provided that the registrar or clerk of the court may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a magistrate.

5 Summons

(1) Every person making a claim against any other person may, through the office of the registrar or clerk of the court, sue out a simple summons or a combined summons addressed to the sheriff directing the sheriff to inform the defendant among other things that, if the defendant disputes the claim and wishes to defend, the defendant shall-

(a) within the time stated in the summons, give notice of intention to defend; and

(b) after complying with paragraph (a), if the summons is a combined summons, within 20 days after giving such notice, deliver a plea (with or without a claim in reconvention), or an exception, or an application to strike out.

(2)(a) In every case where the claim is not for a debt or liquidated demand the summons shall be a combined summons similar to Form 2B of Annexure 1, to which summons shall be

annexed a statement of the material facts relied upon by the plaintiff in support of plaintiff's claim, and which statement shall, amongst others, comply with rule 6, but in divorce matters a combined summons substantially compliant with Form 2C shall be used.

(b) Where the claim is for a debt or liquidated demand the summons may be a simple summons similar to Form 2 of Annexure 1.

(3)(a)(i) Every summons shall be signed by an attorney acting for the plaintiff and shall bear the attorney's physical address situated in an area within the court's jurisdiction and the attorney's electronic mail address at which plaintiff will accept service of all subsequent documents and notices in the suit. **[In places where there are three or more attorneys or firms of attorneys practising independently of one another, the physical address shall be within 15 kilometres of the courthouse.]** The summons shall also bear the attorney's postal address and facsimile address, where available. **[, and, where available, the attorney's facsimile and electronic mail address.]** The State Attorney may appoint the office of the registrar or clerk of the civil court as its address for service.

(ii) If no attorney is acting for the plaintiff, the summons shall be signed by the plaintiff. The summons shall bear the plaintiff's physical address situated in an area within the court's jurisdiction and, where available, the plaintiff's electronic mail address, at which the plaintiff will accept service of all subsequent documents and notices in the suit. **[In places where there are three or more attorneys or firms of attorneys practicing independently of one another, the physical address shall be within 15 kilometres of the courthouse.]** The summons shall also bear the plaintiff's postal address and facsimile address, where available. **[, and, where available, the plaintiff's facsimile and electronic mail address.]**

(iii) After subparagraph (i) or (ii) has been complied with, the summons shall be signed and issued by the registrar or clerk of the court and shall bear the date of issue by the registrar or clerk as well as the case number and unique reference number allocated thereto.

(b) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or electronic mail address **[or postal address]** and, if so, shall state such preferred manner of service: Provided that where the plaintiff is represented by an attorney service via electronic mail shall be compulsory in addition to any other preferred service address.

(c) If an action is defended the defendant may, at the written request of the plaintiff, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(4) Every summons shall set forth-

(a) the surname and first names or initials of the defendant by which the defendant is known to the plaintiff, the defendant's residence or place of business and, where known, the defendant's occupation and employment address and, if the defendant is sued in any representative capacity, such capacity; and

(b) the full names, gender (if the plaintiff is a natural person) and occupation and the residence or place of business of the plaintiff, and if the plaintiff sues in a representative capacity, such capacity.

(5)(a) Every summons shall include a form for notice of intention to defend.

(b) Every summons, except a divorce summons, shall include:

(i) a form for consent to judgment;

(ii) a notice drawing the defendant's attention to the provision of section 109 of the Act; and

(iii) a notice in which the defendant's attention is directed to the provisions of sections 57, 58, 65A and 65D of the Act in cases where the action is based on a debt referred to in section 55 of the Act.

(6) A summons shall also-

(a) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(d) of the Act, contain an averment that the whole cause of action arose within the district or region, and set out the particulars in support of such averment;

(b) where the defendant is cited under the jurisdiction conferred upon the court by section 28(1)(g) of the Act, contain an averment that the property concerned is situated within the district or region; and

(c) show any abandonment of part of the claim under section 38 of the Act and any set-off under section 39 of the Act.

(7) Where the plaintiff issues a simple summons in respect of a claim regulated by legislation the summons may contain a bare allegation of compliance with the legislation, but the declaration, if any, must allege full particulars of such compliance:

Provided that where the original cause of action is a credit agreement under the National Credit Act, 2005, the plaintiff seeking to obtain judgment in terms of section 58 of the Act shall in the summons deal with each one of the relevant provisions of sections 129 and 130 of the National Credit Act, 2005, and allege that each one has been complied with.

(8) A summons for rent under section 31 of the Act shall be in the form prescribed in Annexure 1, Form 3.

(9) Where the plaintiff sues as cessionary the plaintiff shall indicate the name, address and description of the cedent at the date of cession as well as the date of the cession.

(10) A summons in which an order is sought to declare executable immovable property

which is the home of the defendant shall contain a notice in the following form:
'The defendant's attention is drawn to section 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for eviction will infringe that right it is incumbent on the defendant to place information supporting that claim before the Court'.
(11) If a party fails to comply with any of the provisions of this rule, such summons shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 60A.

9 Service of process, notices and other documents

(1)(a) A party requiring service of any process, notice or other document to be made by the sheriff shall provide the sheriff with the original or a certified copy of such process, notice or document, together with as many copies thereof as there are persons to be served: Provided that the registrar or clerk of the court may, at the written request of the party requiring service, hand such process, notice or document and copies thereof to the sheriff.
(b) In any civil proceedings before a Magistrate's Court, any summons, warrant, rule, order, notice, document or other process of a Magistrate's Court, or any other communication which by any law, rule or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by fascimile or by means of any other electronic medium to the sheriff.
(c) The document received or printed as a result of the transmission contemplated in paragraph (b) is of the same force and effect as the original thereof.
(2)(a) Except as provided in paragraph (c) or in the case of service by post or upon order of the court, process, notices or other documents shall not be served on a Sunday or public holiday.
(b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.
(c) An interdict, a warrant of arrest, and a warrant of attachment of property under section 30bis of the Act may be executed on any day at any hour and at any place.
(3) All process shall, subject to the provisions of this rule, be served upon the person affected thereby by delivering a copy thereof in one or other of the following manners:
(a) To the said person personally or to such person's duly authorised agent: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;
(b) at the residence or place of business of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, when a building, other than

an hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

(c) at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over such person or, in the absence of a person in authority, to a person apparently not less than 16 years of age and apparently in charge at such person's place of employment;

(d) if the person so to be served has chosen a domicilium citandi, by delivering a copy thereof at the domicilium so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;

(e) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(f) if the plaintiff or his or her authorised agent has given instructions in writing to the sheriff to serve by registered post, the process shall be so served: Provided that a debt counsellor who makes a referral to court in terms of section 86(7)(c) or 86(8)(b) of the National Credit Act, 2005 may cause the referral to be served by registered post or by hand;

(g) in proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council;

(h) to any agent or attorney who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected in any applicable manner prescribed in this rule;

(i) where a local authority or statutory body is to be served, on the town clerk or assistant town clerk or mayor of such local authority or the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(j) where the person to be served with any document initiating application proceedings is already represented by an attorney of record such document may be served upon such attorney by the party initiating the proceedings:

Provided that where service has been effected in the manner prescribed by paragraphs (b),(c),(e) or (g), the sheriff shall set out in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the

process: Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit: Provided furthermore that service of any process through which a divorce action or action for nullity of marriage is instituted shall only be effected by the sheriff on the defendant personally.

(4)(a) The sheriff shall, on demand by the person upon or against whom process is served, exhibit to that person the original or certified copy of the process.

(b) The sheriff or other person serving the process or documents shall explain the nature and contents thereof to the person upon whom service is being affected and shall state in his or her return or affidavit or on the signed receipt whether he or she has done so.

(5) Where the person to be served keeps his or her residence or place of business closed and thus prevents the sheriff from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door or security gate of such residence or place of business or to place such copy in the post box at such residence or place of business.

(6) Service of an interpleader summons where claim is made to any property attached under process of the court may be made upon the attorney, if any, of the party to be served.

(7) Where two or more persons are to be served with the same process, service shall be effected upon each, except-

(a) in the case of a partnership, when service may be affected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner prescribed in this rule;

(b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any manner prescribed in this rule;

(c) in the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairperson or secretary or similar officer thereof in any manner prescribed in this rule.

(8) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner prescribed in this rule.

(9)(a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given: Provided that, subject to rules 5 and 13, service of such notice, request, statement or other document may be effected by sending it by facsimile or electronic mail to the facsimile address or electronic mail address given in the summons or notice of intention to defend, as the case may be: Provided further that:

(i) Service of a document of the court, other than service by the sheriff or as ordered by the court, must be done through the e-justice system where both the party effecting service and the party on whom service is to be effected are registered users; and

(ii) Service of any notice, request, statement or other document which is not process of the court to be effected by or on a party or legal practitioner who is not a user of the e-justice system may be done using the conventional method and proof of service must be filed with the clerk, registrar or service desk simultaneously with the original process, notice or document so served;

.(b) An address for service, postal address, facsimile address or electronic address so given as contemplated in paragraph (a) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that paragraph at such new address.

(c)(i) Service by registered post under this subrule shall, until the contrary appears, be deemed to have been effected at 10 o'clock in the forenoon on the fourth day after the postmarked date upon the receipt for registration.

(ii) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 is applicable to service by facsimile or electronic mail.

(d) Service under this subrule need not be effected through the sheriff.

(10) Subject to rule 10, where the court is satisfied that service cannot be effected in any manner prescribed in this rule and that the action is within its jurisdiction, it may make an order allowing service to be effected by the person and in the manner specified in such order.

(11) Where service of an ex parte order calling upon the respondent to show cause at a time stated or limited in the order or of an interpleader summons is to be effected upon any party, service of such ex parte order or interpleader summons shall be effected-

(a) in the case where the party to be so served is the State, at least 20 days; or

(b) in the case where any other party is to be served, at least 10 days,8* before the time specified in such ex parte order or interpleader summons for the appearance of such party.

(12) Except where otherwise provided, notice of any application to the court shall be served-

(a) in the case where the party to be served is the State or a servant of the State in his or her official capacity, at least 20 days; or

(b) in the case of any other party, at least 10 days,9* before the day appointed for the hearing of the application, but the court may on cause shown reduce such period.

(13)(a) Unless otherwise provided, where service of process may be effected by registered post such service shall be effected by the sheriff placing a copy thereof in an envelope, addressing and posting it by pre-paid registered letter to the address of the party to be served and making application at the time of registration for an acknowledgment by the

addressee of the receipt thereof as provided in regulation 44(5) of the regulations published under Government Notice R550 of 14 April 1960.

(b) A receipt form completed as provided in regulation 44(8) of the said regulations shall be a sufficient acknowledgment of receipt for the purposes hereof.

(c) If no such acknowledgment be received the sheriff shall state the fact in his or her return of service of the process.

(d) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:

'This letter must not be readdressed. If delivery is not effected before ..... 20....., this letter must be delivered to the Sheriff of the Magistrate's Court at .....'.

9A Proof of service

Proof of service shall be filed with the court, including:

(a) confirmation that service was effected electronically;

(b) the electronic mail address to which service was effected; and

(c) the electronic delivery receipt:

Provided that proof of service may be filed electronically.

13 Notice of intention to defend

(1) 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.

(2) In an action against any Minister, Deputy Minister, Provincial Premier, officer or servant of the State, in such official capacity, the State or the administration of a province, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorised a shorter period.

(3)(a) When a defendant delivers notice of intention to defend-

(i) the defendant shall therein give his or her full physical, residential or business address, electronic mail address, postal address and where available, facsimile address: **[and electronic mail address;]** Provided that the physical, residential or business address so given shall be situated in an area within the court's jurisdiction: Provided further that in the case of a defendant who is not represented by an attorney the electronic mail address shall only be provided where available; and

(ii) the defendant shall also indicate and select therein the preferred address for

service on the defendant thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by an order or practice of the court personal service is required: Provided that where the defendant is represented by an attorney service via electronic mail shall be compulsory in addition to any other preferred service address. **[; and**

(iii) if a physical address is given by the defendant in the notice of intention to defend as the preferred address for the purpose of such service, in places where there are three of more attorneys or firms of attorneys practicing independently of one another, that address shall be situated within 15 kilometres of the courthouse.]

(b) The defendant shall indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service: Provided that where the defendant is represented by an attorney service via electronic mail shall be compulsory in addition to any other preferred service address.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

(4) A party shall not by reason of delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

(5) Notwithstanding subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the request for judgment by default.

(6) After receipt of a notice of intention to defend, the plaintiff shall lodge forthwith with the registrar or clerk of the court the original summons and the return of service.

23 Discovery

Proposed subrule (17)

(17)(a) The parties must prepare an electronic bundle of documents for use at trial.

(b) All documents required for trial, whether originally in paper format or electronic format, must if paper based, be scanned and converted to PDF format and if electronic, be converted to PDF format.

(c) Where discovered documents are not able to be converted to PDF format, the parties must agree on a suitable format to facilitate the inclusion of the document in a bundle for trial.

(d) Parties who do not have access to the e-justice system shall be assisted by the service desk to comply with the provisions of this rule.

30 Record of proceedings in civil matters

(1) [Minutes of record shall forthwith be made of-

(a) any judgment given by the court;

(b) any oral evidence given in court;

(c) any objection made to any evidence received or tendered; and

(d) the proceedings of the court generally, including the record of any inspection in loco.]

(2) **[The court shall mark each document put in evidence and note such mark on the record.]**

(3) **[The minutes and marks may be made by the registrar or clerk of the court and, save as provided in subrule (4), by the presiding judicial officer.]**

(4) **[The addresses of the parties, oral evidence given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of the proceedings,]** All proceedings of the court, including the record of any inspection in loco may be noted **[in shorthand (also in this rule referred to as 'shorthand notes')]** in writing either verbatim or in narrative form or recorded by **[mechanical, electronic or digital]** electronic means.

[(5)(a) Every person employed for the taking of shorthand notes or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer in the following form:

'I, ..., swear/solemnly and sincerely affirm and declare that I will faithfully, accurately and to the best of my ability take down in shorthand or cause to be recorded by mechanical, electronic or digital means, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the court and that I will similarly, when required to do so, transcribe the same or, as far as I am able to do so, any other notes taken by any officer of the court

or recorded by mechanical, electronic or digital means.'.

(b) Such oath or affirmation shall be administered in the manner prescribed for the taking of an oath or affirmation.]

[(6)(a) Shorthand notes taken in terms of this rule shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (7), no shorthand notes taken in terms of this rule shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed in terms of paragraph (b) shall be certified as correct by the person making it and shall be filed with the record.]

(7)(a) **[In any case in which no transcription was directed in terms of subrule (6a)]** Any person may on notice to the registrar or clerk of the court request a transcription of **[any shorthand note taken by virtue of a direction given under subrule (4) and shall pay, in respect of]** proceedings made by **[mechanical, electronic or digital]** electronic means**, [the full cost thereof as predetermined by agreement between the contractor concerned and the State]** and pay the full cost upon request, where after the state will release the audio recording to the transcriber for such transcription.

[(b) One copy of the transcript of the shorthand notes referred to in paragraph (a) shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making it and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.]

(8) Subject to the provisions of subrule (11), **[any shorthand notes, and]** any transcript **[thereof,]** of electronic recordings certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

[(9) Subject to subrule (7)(b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical, electronic or digital means may, upon application to the registrar or clerk of the court, be supplied to any person upon payment of the full cost thereof as predetermined by agreement between the contractor concerned and the State, in the case of a copy of a transcript referred to in subrules (6) and (7).]

[(10) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed also as a

reference to a record of proceedings made by mechanical, electronic or digital means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical, electronic or digital record, or to a person transcribing such record, as the case may be.]

(11) Any party may, not later than 10 days after judgment, or where the proceedings have been noted in **[shorthand]** writing or by **[mechanical, electronic or digital]** electronic means, within 10 days after having been notified by the registrar or clerk of the court that the transcript **[of the shorthand notes or mechanical, electronic or digital]** electronic record has been completed, apply to the court to correct any errors, omission or defect in the **[minutes of such proceedings or in]** the transcript of such **[shorthand notes or mechanical,]** electronic record and the court may then correct any such errors, omission or defect .

(12) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the court.

30A Civil e-justice system

(1) The civil record consists of all electronic and digital entries captured on the e-justice system, processes, pleadings and notices filed in paper form, scanned or electronically and all electronic, digital, audio and visual recordings.

(2) The particulars recorded in the civil e-justice system for all cases shall include, but are not limited to –

(a) date of issue of process

(b) unique reference number and case number

(c) parties

(d) legal practitioners

(e) cell phone numbers and electronic mail addresses of parties and legal practitioners

(f) all processes, returns of service, notices, requests, applications and documents filed

(g) notifications to parties and legal practitioners

(h) dates of appearances and mode of appearances

(i) dates of future appearances

(j) applications

(k) audio recording of all hearings

(l) Minutes, Reports, exhibits

(m) Particulars of witnesses and appearance mode

(n) judgments including default judgments

(o) Orders, decrees and directives

(p) appeals and outcomes

(q) the date and effect of any order of the High Court of South Africa varying any judgment and orders on appeal

(r) Indication of particulars that may not be published.

(s) taxations and review of such taxations

(t) warrants of execution

51 Appeals in civil cases

(1) Except when a judgment has been handed down, **[U]** upon a request in writing or via the e-justice system by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing-

(a) the facts he or she found to be proved; and

(b) his or her reasons for judgment.

(2) The registrar or clerk of the court shall on receipt from the judicial officer of a judgment in writing supply to the party applying therefor a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted within 20 days after the date of a judgment appealed against was handed down or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor. [, whichever period shall be the longer.]

(4) An appeal shall be noted by the delivery of notice, and, unless the court of appeal shall otherwise order, by giving security for the respondent's costs of appeal to the amount of R1 000: Provided that no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.

(5) Money paid into court under subrule (4) and outstanding for more than three years, may be paid into the State Revenue Fund, after three months' notice of such intention in writing has been given to the parties concerned, whereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

(6) A cross-appeal shall be noted by the delivery of notice within 10 days after the delivery of the notice of appeal.

(7) A notice of appeal or cross-appeal shall state-

(a) whether the whole or part only of the judgment is appealed against, and if part only, then what part; and

(b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(8)(a) Upon the delivery of a notice of appeal the relevant judicial officer shall within 15 days thereafter hand to the registrar or clerk of the court a statement in writing showing (so far as may be necessary having regard to any judgment in writing already handed in by him or her)-

(i) the facts he or she found to be proved;

(ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

(b) A statement referred to in paragraph (a) shall become part of the record.

(c) This rule shall also, so far as may be necessary, apply to a cross-appeal.

(9) A party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.

(10) Subject to rule 50 of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa, the registrar or clerk of the court shall, within 15 days after he or she receives notice that an appeal has been set down for hearing, transmit electronically to the registrar of the court of appeal the record in the action duly certified.

(11)(a) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing or via the e-justice system stating whether he or she abandons the whole, or if part only, what part of such judgment.

(b) Every notice of abandonment in terms of paragraph (a) shall become part of the record.

(12) Where the parties agree in terms of section 82 of the Act that the decision of the court shall be final, either party may lodge the memorandum of such agreement with the registrar or the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter.

55 Applications

(1)*(a)*(i) Every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(ii) The provisions of subparagraphs (iv) to (vi) of paragraph *(b)* of subrule (3) shall apply, with the necessary changes, to this subrule.

(iii) Applications in terms of this subrule made via the e-justice system, shall be heard via the e-justice system, unless the court dealing with the application directs that it shall be heard in open court.

*(b) T*he notice of motion must be addressed to the party or parties against whom relief is claimed and to the registrar or clerk of the court.

(c) Where it is necessary or proper to give any person notice of an application, the notice of motion must also be addressed to and served on such person.

*(d)(*i) The notice of motion in every application other than interlocutory and other applications incidental to pending proceedings or one brought *ex parte* must correspond substantially with Form 1A of Annexure 1.

(ii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given.

(e) In a notice of motion the applicant must-

(i) appoint a physical address situated in an area within the court's jurisdiction, and, where available, an electronic mail address **[which address must, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of court,]** at which notice and service of all documents in such proceedings will be accepted: Provided that where the applicant is represented by an attorney the appointment of an electronic mail address shall be compulsory, in addition to that of a physical address;

(ii) state the applicant's **[postal, facsimile or electronic mail]** postal or facsimile addresses where available; and

(iii) set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the respondent of the notice.

.*(f)* If the respondent does not, on or before the day mentioned for that purpose in a notice of motion, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar or clerk of the court notice of set down five days before the day upon which the application is to be heard.

(g) Any party opposing the grant of an order sought in a notice of motion must-

(i) within the time stated in the notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint **[an]** a physical address situated in an area within the court's jurisdiction, and, where available, an electronic mail address, **[which address must, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of the court,]** at which he or she will accept notice and service of all documents, as well as such party's **[postal, facsimile or electronic mail]** postal or facsimile addresses where available: Provided that where the respondent is

represented by an attorney the appointment of an electronic mail address shall be compulsory, in addition to that of a physical address;

(ii) within 10 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and

(iii) where it intends to raise questions of law only, deliver notice of intention to do so, within the time stated in subparagraph (ii), setting forth such question.

(h)(i) After receipt of a notice of intention to oppose, the applicant must lodge forthwith with the registrar or clerk of the court the original notice of motion plus annexures thereto and, where applicable, the return of service.

(ii) Within 10 days of the service upon him or her of the affidavit and documents referred to in paragraph (g)(ii), the applicant may deliver a replying affidavit.

(i) The court may in its discretion permit the filing of further affidavits.

(j)(i) Where no answering affidavit, or notice in terms of paragraph (g)(iii), is delivered within the period referred to in paragraph (g)(ii) the applicant may within five days of the expiry thereof apply to the registrar or clerk of the court to allocate a date for the hearing of the application.

(ii) Where an answering affidavit is delivered the applicant may apply for an allocation of the date for the hearing of the application within five days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in paragraph (h) and where such notice is delivered the applicant may apply for such allocation within five days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period provided for in subparagraph (ii), the respondent may do so immediately upon the expiry thereof.

(iv) Notice in writing of the date allocated by the registrar or clerk of the court must be delivered by applicant or respondent, as the case may be, to the opposite party not less than 10 days before the date allocated for the hearing.

(k) (i) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

(ii) The court may in particular, but without affecting the generality of subparagraph (i) direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for that person or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(2)*(a)*(i) Any party to any application proceedings may bring a counter-application or may

join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action.

(ii) The provisions of subparagraphs (iv) to (vi) of paragraph *(b)* of subrule (3) shall apply, with the necessary changes, to this subrule.

(iii) Applications in terms of this subrule made via the e-justice system, shall be heard via the e-justice system, unless the court dealing with the application directs that it shall be heard in open court.

(b) The periods prescribed with regard to applications apply with appropriate changes to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.

(3)*(a)* No application in which relief is claimed against another party must be considered *ex parte* unless the court is satisfied that-

(i) the giving of notice to the party against whom the order is claimed would defeat the purpose of the application; or

(ii) the degree of urgency is so great that it justifies dispensing with notice.

(b) **[The notice of motion in every application brought ex parte must correspond substantially with Form 1 of Annexure 1.]** Every application brought *ex parte* must:

(i) be upon notice of motion corresponding substantially with Form 1 of Annexure 1 supported by an affidavit, and addressed to the registrar or clerk of the court;

(ii) be filed with the registrar or clerk of the court and set down, before noon on the court day but one preceding the day upon which it is to be heard;

(iii) set forth the form of order sought, specify the affidavit filed in support thereof, and request the registrar or clerk of the court to place the matter on the roll for hearing;

(iv) if brought by a legal practitioner, be made via the e-justice system; or

(v) if brought by a party who is not represented by a legal practitioner but who is registered on the e-justice system, be made via the e-justice system; or

(vi) if brought by a party who is not represented by a legal practitioner and who is not registered on the e-justice system, be made via the conventional method.

(bA)(i) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which such person desires to be heard, whereupon the registrar must set such application down for hearing at the same time as the initial application.

(ii) the provisions of subparagraphs (iv) to (vi) of paragraph *(b)* shall apply, with the necessary changes, to this paragraph.

(bB)(i) Applications made via the e-justice system shall be heard via the e-justice system, unless the court dealing with the application directs that it shall be heard in open court.

(ii) The court hearing the matter may grant or dismiss either of or both such applications as the case may require, or may adjourn proceedings upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.

(c) Any order made against a party on an ex parte basis must be of an interim nature and must call upon the party against whom it is made to appear before the court on a specified return date to show cause why the order should not be confirmed.

(d) Any person against whom an order is granted ex parte may anticipate the return day upon delivery of not less than 24 hours' notice: Provided that the provisions of subparagraphs (iv) to (vi) of paragraph *(b)* shall apply, with the necessary changes, to this paragraph.

(e) A copy of any order made *ex parte* and of the notice of motion and affidavit **[, if any,]** on which it was made must be served on the respondent thereto.

(f) Where cause is shown against any order made ex parte against a party the court may order the applicant or respondent or the deponent to any affidavit on which it was made to attend court for examination or cross-examination.

(g) Any order made *ex parte* may be confirmed, discharged or varied by the court on cause shown by any person affected thereby and on such terms as to costs as the court may deem fit.

(h) Ex parte applications may be heard in chambers.

(4)*(a)*(i) Interlocutory and other applications incidental to pending proceedings must be brought on notice corresponding substantially with Form 1C of Annexure 1, indicating a date assigned by a registrar or clerk of the court or as directed by a magistrate before whom the matter is to be heard.

(ii) The notice must be supported by affidavits if facts need to be placed before the court.

(iii) Copies of the notice and all annexures thereto must be served upon every party to whom notice is to be given.

(b) Applications to the court for authority to institute proceedings or directions as to procedure or service of documents may be made ex parte where the giving of notice of such application is not appropriate or not necessary.

(c) The provisions of subparagraphs (iv) to (vi) of paragraph *(b)* of subrule (3) shall apply, with the necessary changes, to this subrule.

(d) Applications in terms of this subrule made via the e-justice system, shall be heard via the e-justice system, unless the court dealing with the application directs that it shall be heard in open court.

(5)*(a)*(i) A court, if satisfied that a matter is urgent, may make an order dispensing with the

forms and service provided for in these rules and may dispose of the matter at such time and place and in accordance with such procedure (which must as far as practicable be in terms of these rules) as the court deems appropriate.

(ii) The provisions of subparagraphs (iv) to (vi) of paragraph *(b)* of subrule (3) shall apply, with the necessary changes, to this subrule.

(iii) Applications in terms of this subrule made via the e-justice system, shall be heard via the e-justice system, unless the court dealing with the application directs that it shall be heard in open court.

(b) An application brought as a matter of urgency must be supported by an affidavit which sets out explicitly the circumstances which the applicant avers render the matter urgent and the reasons why the applicant claims that he or she could not be accorded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in his or her absence in an urgent application may by notice set down the matter for reconsideration of the order.

63 Filing, preparation and inspection of documents

(1)(a) Unless filed electronically, **[A]**all documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blue-black ink on one side only of paper of good quality and of A4 standard size.

(b) A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

(2) Stated cases, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(3) Except when filed electronically, **[I]**in defended actions or opposed applications the plaintiff or applicant, as the case may be, shall not later than 10 days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

(4) Every affidavit filed with the registrar or clerk of the court by or on behalf of a respondent shall, if he or she is represented, on the first page thereof bear the name and electronic mail address of the attorney filing it.

(5) The registrar or clerk of the court may reject any document which does not comply with the requirements of this rule or the requirements for the electronic system.

(6) Any person, with leave of the registrar or clerk of the court and on good cause shown, may get access through the e-justice system to a specific case electronically to examine and download the file or portions thereof or to examine and make copies of all documents in a court file at the office of the registrar or clerk of the court if not available electronically.

64 Procedure for securing the attendance of witnesses in criminal cases

(1) (a) The process for securing the attendance of any person before the court to give evidence in any criminal case or to produce any books, papers or documents, shall be by subpoena prepared by the party desiring the attendance of that person and issued by the registrar or clerk of the court.

(b) A subpoena duly issued by the registrar or clerk of the court may be sent electronically to the witness, including transmission thereof to such witness' electronic mail address or cell phone.

(2) The **[original]** subpoena **[and so many copies thereof as there are]** for a witness**[es]** to be subpoenaed, shall be delivered to **[the sheriff or other person authorised to serve subpoenas in the area where the witness is residing]** a member of the police force or to the person referred to in section 15(2)**. [or]** (3) or (4) of the Act, as the case may be.

(3) **[A copy of t]** The subpoena shall be served upon the witness

(a) personally; **[or]**

(b) at his or her residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat**[.]**;

(c) through his or her electronic mail address; or

(d) digitally to his or her cell phone.

(4) If the person to be served with a subpoena keeps his residence or place of business closed and thus prevents the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

[(5) The person serving a witness subpoena shall, if required by the person upon whom it is served, exhibit to him or her the original.]

(6) (a) The person serving a witness subpoena shall make a return of service **[by endorsing on the original or on a document attached thereto]** specifying the manner in which the subpoena was served**[, and the original shall be returned to]** and file it in the case docket or with the registrar or clerk of the court out of whose office it was issued.

(b) If the subpoena was served through an electronic mail address –

(i) the delivery notice must be attached to the return of service; and

(ii) in the case of an audio-visual meeting electronic mail invitation for remote audio visual testimony, any response to the electronic mail invitation.

(c) If the subpoena was served digitally to his or her cell phone, a screenshot of such digital communication must be attached to the return of service.

(6) The subpoena must provide the witness with the unique reference number and the case number of the case, the date, time and court to be at court to testify, information regarding

section 158 of the Criminal Procedure Act, 1977, the name and contact details of the prosecutor to discuss and to arrange for audio-visual testimony if it will be a suitable option for the witness and to arrange for a consultation, as well as the consequences for not complying with the subpoena.

65 Criminal [record book] e-justice system

(1) [The registrar or clerk of the court shall keep a book to be styled the 'criminal record book' in which he or she shall daily enter particulars of every criminal case coming before the court on that day.]

The criminal e-justice system consists of all electronic and digital entries captured on the integrated criminal e-justice system, charge sheets in paper form or scanned and all electronic, digital, audio and visual recordings.

[(2) Where the court has issued a warrant in terms of the provisions of section 55 or section 56 of the Criminal Procedure Act, 1977, and the prosecutor subsequently withdraws the charge, it shall not be necessary to again enter particulars of such case in the criminal record book: Provided that if such particulars are not entered in the criminal record book a separate register shall be kept by the registrar or clerk of the court of all warrants issued in terms of the aforesaid sections and at each successive stage he or she shall enter therein particulars of the date of issue of the warrant, the case number, the name of the accused, the date upon which the warrant was forwarded to the police for execution, the fact that the case has been withdrawn and any other particulars that circumstances may require.]

[(3) The charge sheet in a criminal case or, when the matter comes before the court by way of preparatory examination, the covering sheet, shall, when the matter first comes before the court, be numbered by him or her with a consecutive number for the year and the case shall then be entered in the criminal record book under that number.]

(4) The particulars recorded in the integrated criminal e-justice system for all cases **[record book]** shall include but are not limited to –

(a) Police station and CAS number

(b) Date of arrest

(c) Date of first appearance

(d) **[(a)]** the date of appearances **[hearing]**;

(e) Reasons for postponements

(f) All scheduled future dates

(g) Appearance mode

(h) **[(b)]** the unique reference number and consecutive case number;

(i) **[(c)]** the name of the accused;

(j) Names of the legal practitioners, prosecutor, presiding officer, interpreter, clerk, intermediary, and any guardian where applicable

(k) Cell phone numbers and electronic mail address of these court participants

(l) **[(d)]** the crimes charged**[;]**

(m) dates of commissioning of each offence

(n) warrants

(o) Custody status and bail details;

(p) interlocutory orders made including e-justice and trial readiness certification

(q) Plea and date of plea

(r) Witness notifications

(s) Who testified including appearance mode

(t) All exhibits handed in

(u) **[(e)]** the verdict;

(v) **[(f)]** the sentence **[or]**

(w) Any other mode of disposal;

(x) Ancillary orders;

(y) Appeal or review outcome; and

(z) **[(g) any remarks (including]** the date and effect of any order of the High Court of South Africa varying the verdict or sentence on review or appeal **[).]**

(aa) Notification of particulars that may not be published.

[(5) The judicial officer presiding at a criminal hearing shall himself or herself record in the criminal record book any sentence imposed or other order of disposal made by him or her including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.]

66 Records of criminal cases

(1) **[The plea and explanation or statement, if any, of the accused, the evidence orally given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of c]** Criminal proceedings or any portion thereof, may be noted in **[shorthand (also in this rule referred to as 'shorthand notes')]** writing either verbatim or in narrative form or recorded by **[mechanical]** electronic means.

[(2) Every person employed for the taking of shorthand notes in terms of subrule (1) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his or her duties in writing take an oath or make an affirmation before a judicial officer as provided in rule 30(5).]

[(3)(a) Shorthand notes taken in the course of criminal proceedings shall be certified as correct by the shorthand writer and filed with the record of the case by the registrar or clerk of the court.

(b) Subject to the provisions of subrule (4) and rule 67(3), (8) and (10), no such shorthand notes shall be transcribed unless a judicial officer so directs.

(c) The transcript of any shorthand notes transcribed under paragraph (b) shall be certified as correct by the person making such transcript and shall be filed with the record.]

(4) **[(a) In any case in which no transcription was directed in terms of subrule (3), a]** Any person may, on notice to the registrar or clerk of the court, request a transcription **[of any shorthand note taken by virtue of a direction given under subrule (1)]** and shall, in respect of proceedings made by **[mechanical]** electronic means, **[save in the case of the State, pay the full cost thereof as predetermined by agreement between the contractor concerned and the State and]** pay the full cost upon request, where after the state will release the audio recording to the transcriber for such transcription.

(b) One copy of the transcript of such shorthand notes shall be supplied, free of charge, to the person at whose request the transcription was made.

(c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making such copy and shall be filed with the record of the case.

(d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the registrar or clerk of the court in advance.]

[(5) Subject to the provisions of subrule (6), any shorthand notes and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.]

(6) The prosecutor or the accused may, not later than 10 days after judgment or where the proceedings have been taken down in **[shorthand]** writing or by **[mechanical]** electronic means, within 10 days after the transcription thereof has been completed, apply to the court to correct any error, omission or defect in the record or the certified transcript thereof and the court may correct any such error, omission or defect.

(7) **[Subject to subrule (4)(b), a copy of any transcript made simultaneously with the transcription of proceedings made by mechanical means may, upon application to the registrar or clerk of the court be supplied to any person upon payment, save in the case of the State, of the full cost thereof as predetermined by agreement between the contractor concerned and the State , in the case of a copy of a transcript referred to in subrules (3) and (4)(a).]**

(8) **[Any reference in this rule to shorthand notes or to a transcription or transcript of**

such notes or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the making of such mechanical record, or to a person transcribing such record as the case may be.]

(9) Where **[a magistrate or]** the court is satisfied that an accused is unable to pay the costs of obtaining a copy of any record or of any transcript thereof or is able to pay only part of such costs, such **[magistrate or]** court may, at the request of the accused, direct the registrar or clerk of the court to deliver a copy of such record or transcript to the accused free of charge or at such reduced charge as the **[magistrate or]** court may determine.

67 Criminal appeals

(1)(a) An appellant, other than a person who applies orally for leave to appeal immediately after the passing of the sentence or order as contemplated in section 309B(3)(b) of the Criminal Procedure Act, 1977 who wishes to apply for leave to appeal in terms of section 309B(1) of that Act, shall do so in writing or via the e-justice system to the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) An appellant who wishes to apply for condonation as contemplated in section 309B(1)(b)(ii) of the Criminal Procedure Act, 1977, or an appellant who wishes to apply for leave to adduce further evidence as contemplated in section 309B(5)(a) of that Act, shall do so in writing or via the e-justice system to the registrar or clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(2)(a) Where an application for leave to appeal is made in writing or via the e-justice system, notice in terms of section 309B(2)(d) of the Criminal Procedure Act, 1977, shall be given by the registrar or clerk of the court at least 10 days before the date fixed for the hearing of the application for leave to appeal, unless the appellant or his or her legal representative and the director of public prosecutions or a person designated by him or her or in a case in which the prosecution was not at the public instance, the other prosecutor concerned have agreed to a shorter period, and shall correspond substantially to Form 57 of Annexure 1.

(b) The notice referred to in paragraph (a) shall-

(i) be handed to the appellant and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar or clerk of the court or via the e-justice system to his or her legal representative and the director of public prosecutions or a

person designated by him or her or other prosecutor concerned **[and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar or clerk of the court]**; or

(ii) be sent by registered post.

(3)(a) A legal representative appearing on behalf of an appellant, shall simultaneously with the lodging of the application for leave to appeal lodge a power of attorney authorising him or her to act on behalf of the appellant, or if a legal representative is employed after an application for leave to appeal has been lodged, after such appointment.

(b) An appellant shall state in the application for leave to appeal referred to in subrule (1) a postal address where any notice may be served on him or her by registered post if he or she is not represented by a legal representative or if he or she ceases to be represented by a legal representative.

(4) If the appellant is unable, owing to illiteracy or physical defect, to write out an application for leave to appeal or notice of appeal, the clerk of the court shall, upon his or her request, do so.

(5) Upon an application for leave to appeal being granted the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and place such copy before the judicial officer who shall within 15 days thereafter furnish to the registrar or clerk of the court a statement in writing showing-

(a) the facts he or she found to be proved;

(b) his or her reasons for any finding of fact specified in the appellant's statement of grounds of appeal; and

(c) his or her reasons for any ruling on any question of law or as to the admission or rejection of evidence so specified as appealed against.

(5A)(a) A person contemplated in the first proviso of section 309(1)(a) of the Criminal Procedure Act, 1977, who wishes to appeal against his or her conviction or sentence or order, shall do so in writing to the registrar or clerk of the court and shall also send a copy of such notice of appeal to the director of public prosecutions concerned or in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) The notice of appeal contemplated in paragraph (a) shall set forth clearly and specifically the grounds upon which such person wishes to appeal.

(c) The provisions of subrules (3) to (8) and (14) and (15) shall apply further with any changes required by the context.

(6) The registrar or clerk of the court shall upon receipt of the judicial officer's statement contemplated in subrule (5) forthwith inform the appellant that the statement has been furnished.

(7) Within 15 days after the appellant has been informed in terms of subrule (6), he or she may by notice to the registrar or clerk of the court amend his or her statement of grounds of appeal and the judicial officer may, in his or her discretion, within 10 days thereafter furnish to the registrar or clerk of the court a further or amended statement of his or her findings of fact and reasons for judgment.

(8) When an appeal is noted in a case in which the prosecution was not at the public instance any amended statement provided for in subrule (7) shall be served by the appellant also upon the prosecutor.

(9) A director of public prosecutions or other prosecutor desiring to appeal under section 310 of the Criminal Procedure Act, 1977, against the dismissal of a summons or charge shall, within 20 days after such dismissal, deliver a notice of appeal.

(10) Upon an appeal being noted as provided in subrule (9) the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish to the registrar or clerk of the court a statement in writing of his or her reasons for dismissing the summons or charge.

(11) A director of public prosecutions or other prosecutor who contemplates an appeal under section 310 of the Criminal Procedure Act, 1977, shall, within 20 days after the conclusion of the criminal proceedings, in writing request the judicial officer to state a case.

(12)(a) Upon receipt of the request referred to in subrule (11), the registrar or clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish a stated case to the registrar or clerk of the court who shall transmit a copy thereof to the director of public prosecutions or other prosecutor, as the case may be.

(b) The stated case contemplated in paragraph (a) shall be divided into paragraphs numbered consecutively and shall be arranged in the following order:

(i) The judicial officer's findings of fact in so far as they are material to the questions of law on which decision in favour of the appellant was given;

(ii) questions of law; and

(iii) the judicial officer's decision on such questions and his or her reasons therefor.

(13) The director of public prosecutions or other prosecutor may, within 15 days after the receipt by him or her of the stated case, deliver notice of appeal against the decision on questions of law.

(14) Every notice of appeal, statement of grounds of appeal, judicial officer's statement and stated case filed of record with or furnished to the registrar or clerk of the court under this rule shall become part of the record.

(15)(a) The registrar or clerk of the court shall within 10 days after receipt by him or her of the statement referred to in subrule (7) or (10) or of the notice of appeal delivered in terms of subrule (13), as the case may be, transmit to the registrar of the court of appeal the record of the criminal proceedings or the stated case**[,]** via the e-justice system. **[together with three copies thereof.]**

(b) When the prosecution is at the public instance he or she shall also transmit via the e-justice system one such copy to the director of public prosecutions: Provided that if the appellant has not amended his or her statement of grounds of appeal as provided in subrule (7), the registrar or clerk of the court shall so transmit the record without delay after the period allowed for an amendment of the statement of grounds of appeal has lapsed.

(16) A party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.