ANNEXURE A

RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA

E-RULES: DRAFT AMENDED UNIFORM 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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1 Definitions

In these Rules and attached forms, unless the context otherwise indicates-

'**Act**' means the Superior Courts Act, 2013 (Act 10 of 2013);

'**action**' means a proceeding commenced by summons;

'**advocate**' means a legal practitioner as defined, admitted and enrolled as such, under the Legal Practice Act, 2014 (Act 28 of 2014);

'**application**' means a proceeding commenced by notice of motion or other forms of applications provided for by rule 6;

'**attorney**' means a legal practitioner as defined, admitted and enrolled as such, under the Legal Practice Act, 2014 (Act 28 of 2014);

'combined summons' means a summons with particulars of plaintiff's claim annexed thereto in terms of subrule (2) of rule 17;

'**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;

'**court**' in relation to civil matters means the High Court as referred to in section 6 of the Act;

'court day' means a day that is not a public holiday, Saturday or Sunday and only court days shall be included in the computation of any time expressed in days prescribed by these Rules or fixed by any order of court;

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

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 (Act No.25 of 2002);

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

'**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;

'**judge**' means a judge sitting otherwise than in open court;

'**Master**' means the Master of the High Court as defined in the Administration of Estates Act, 1965 (Act 66 of 1965);

'mutatis mutandis' means 'subject to the necessary changes';

'**party**' or any reference to a plaintiff or other litigant in terms, includes such party's attorney with or without an advocate, as the context may require;

'**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;

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

'**registrar**' includes **[an assistant]** a senior or chief registrar;

'**sheriff**' means a person appointed in terms of section 2 of the Sheriffs' Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, and a person designated to serve process in terms of section 6A of the said Act;

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

'**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;

1A 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 sub-rule (19);

(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 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 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 Judge President, the Deputy Judge President or the Presiding Judge.

(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 may reject any document filed if such document does not comply with rule 1A.

(b) Where a document is rejected, the registrar 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 the Judge President unless a court directs otherwise.

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 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.

Service of documents

(19)(a) 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.

(b) Service of a document of the court, other than service by the sheriff, which service is to be effected by or on a party or legal practitioner who is not a registered user of the e-justice system, must be done using the conventional method. Proof of service must be filed with the registrar or service desk simultaneously with the original process, notice or document so served.

(c) Personal service shall continue to be effected according to the specific requirements set out in the Uniform Rules of the High Court.

4A Delivery of documents and notices

(1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8), by-

(a) hand at the physical address for service provided, or

(b) registered post to the postal address provided, or

(c) facsimile or electronic mail to the respective addresses provided.

(2) An address for service, postal address, facsimile address or electronic address mentioned in subrule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that subrule at such new address.

(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by facsimile or electronic mail.

(4) Service under this rule need not be effected through the Sheriff.

[(5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail].

6 Applications

(Ex parte applications)

(4)(a) Every application brought *ex parte* shall:

[(whether by way of petition or upon notice to the registrar supported by an affidavit as aforesaid) must be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard. If brought upon notice to the registrar, such notice must set forth the form of order sought, specify the affidavit filed in support thereof, request the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.]

(i) be upon notice to the registrar supported by an affidavit as referred to in subrule (1);

(ii) be filed with the registrar 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, request the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule;

(b)(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 paragraph *(c)* apply *mutatis mutandis* to this paragraph.
(c)(i) Every application shall be made via the e-justice system: Provided that any party who does not have access to the e-justice system may use the conventional method;
(ii) Applications shall be heard via the e-justice system, unless the court dealing with the application otherwise directs: Provided that where any party does not have access to the e-justice system as referred to in subparagraph (i), the application shall be heard by the conventional method;
(iii) **[At the hearing the court]** The court hearing the matter may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.

(Applications on notice)
(11)(a) Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.
(b) The provisions of subparagraphs (i) and (ii) of paragraph (c) of subrule (4) shall apply *mutatis mutandis* to this subrule.

(Urgent applications)
(12)(a)(i) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.
(ii) The provisions of subparagraphs (i) and (ii) of paragraph (c) of subrule (4) shall apply *mutatis mutandis* to this subrule.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which [is] are averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

(c) A person against whom an order was granted in such person's absence in an urgent application may by notice, set down the matter for reconsideration of the order.

35 Discovery, inspection and production of documents

Proposed subrule (16):

(16)*(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.

DRAFT AMENDED UNIFORM RULE 37(6)*(i)*

37 Pre-trial conference

(6) The minutes of the pre-trial conference shall be prepared and signed by or on behalf of every party and the following shall appear therefrom:

(i) any agreement regarding the production of proof by way of an affidavit in terms of rule 38(2) or whether evidence is required to be taken on commission in terms of rules 38(3); 38(4); 38(5); 38(6); 38(7) and 38(8) or by way of audiovisual link in terms of rule 38(9);

(j) which party will be responsible for the copying, uploading and other preparation of documents;

(k) which documents or copies of documents will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

DRAFT AMENDED UNIFORM RULE 38(9)

Note:
The Rules Board is in the process of amending Rule 38 to provide for the taking of evidence by audio-visual link. Proposed draft amended subrule (9) is inserted below for information.

38 Procuring evidence for trial

(9)*(a)* A court may, on application on notice by any party and where it appears convenient or in the interests of justice, make an order for evidence to be taken through audiovisual link.

(b) A court making an order in terms of paragraph *(a)* must give such directions which it considers appropriate for the taking and recording of such evidence.

(c) An application in terms of this rule must be accompanied by a draft order setting out the terms of the order sought, including particulars of—

(i) the witness who is required to adduce evidence through audiovisual link;

(ii) the address of the premises from where such evidence will be given; and

(iii) the address of the premises to where the evidence will be transmitted by audiovisual link.

(d) For purposes of this rule "audiovisual link" means facilities that enable both audio and visual communications between a witness and persons in a courtroom, to be transmitted in real-time as they take place.

49 Civil Appeals from the High Court

(1)(a)(i) When leave to appeal is required, it may on a statement of the grounds therefor, be requested at the time of the judgment or order.

(ii) Every application for leave to appeal which is made subsequent to the giving of a judgment or order shall be made and every appeal and cross appeal shall be prosecuted via the e-justice system: Provided that where a party does not have access to the e-justice system, such party shall be assisted by the registrar or the help desk referred to in rule 1A(17).

(b) **[When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen days after the date of the order appealed against: Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within fifteen days**

after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of fifteen days.]

When leave to appeal is required and it has not been applied for at the time the judgment or order is given, application for such leave, stating the grounds for the application, shall be made within fifteen days after the date of the order appealed against: Provided that:

(i) when the reasons or the full reasons for the court's order are given on a date later than the date of the order, such application may be made within fifteen days after such later date; and

(ii) the court may, upon good cause shown, extend the aforementioned periods of fifteen days.

(c) When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within ten days after the date of the order.

(d) The application mentioned in paragraph (b) above shall be set down on a date arranged by the registrar who shall give written notice thereof to the parties via the e-justice system.

(e) Such application shall be heard via the e-justice system by the judge who presided at the trial or hearing or, if he is not available, by another judge of the division of which the said judge, when he so presided, was a member.

(2) If leave to appeal to the full court is granted the notice of appeal shall be delivered to all the parties within twenty days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted.

(3) A notice of cross-appeal shall be delivered within ten days after delivery of the notice of appeal or within such longer period as may upon good cause shown be permitted and the provisions of these Rules with regard to appeals shall mutatis mutandis apply to cross-appeals.

(4) Every notice of appeal and cross-appeal shall state-

(a) what part of the judgment or order is appealed against; and

(b) the particular respect in which the variation of the judgment or order is sought.

(5) 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. As soon as possible after receipt of the notice of appeal or cross-appeal, if any, the registrar of the local division shall ascertain from the judge president his direction in the particular case. If the judge president has directed that the appeal be heard by the full court of the Witwatersrand Local Division, the said registrar shall immediately inform the parties of the direction. If not so directed by the judge president, the said registrar shall inform the registrar of the provincial division as well as the parties accordingly.

Note:
Subrule (5) is proposed to be repealed since it is considered that the administrative management of the allocation should be done by the JP in terms of section 8 of the Superior Courts Act, 2013.

(6)(a) **[Within sixty days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within ten days after the expiry of the said period of sixty days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.]**

(i) Within sixty days after delivery of a notice of appeal, an appellant shall make application to the registrar of the division where the appeal is to be heard, for a date for the hearing of such appeal and shall at the same time furnish the registrar with the appellant's legal representative's physical and electronic mail address or if the appellant is unrepresented, then the appellant's full residential address and an electronic mail address, if the appellant has an electronic mail address and the name and address of every other party to the appeal.

(ii) Should the appellant fail to apply for a date of hearing as referred to in subparagraph (i) a respondent may within ten days after the expiry of the said period of sixty days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which such respondent may have noted.

(iii) If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed and either party may apply to the court for an order confirming the lapsing of the appeal: Provided that a respondent shall have the right to apply for an order for any wasted costs.

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.

(7)(a) **[At the same time as the application for a date for the hearing of an appeal in terms of subrule (6)(a) of this rule the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent. The registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such**

omissions shall be referred to in the said index. If the necessary copies of the record are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if-

(i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or

(ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his omission to hand in the copies of the record in time are set out and in which is indicated that an application for condonation of the omission will be made at the hearing of the appeal.

(i) Simultaneously with the application for a date for the hearing of an appeal in terms of subrule (6)(a), the appellant shall deliver a copy of the record on appeal.

(ii) The appellant shall in addition deliver a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such omissions shall be referred to in the said index.

(b) The two copies of the record to be served on the respondent shall be served at the same time as the filing of the aforementioned three copies with the registrar.]

(b) The registrar of the court that is to hear the appeal or cross-appeal shall thereupon assign a date for the hearing of the appeal or for any application for condonation and the appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least twenty days' notice of the date so assigned.

[(c) After delivery of the copies of the record, the registrar of the court that is to hear the appeal or cross-appeal shall assign a date for the hearing of the appeal or for the application for condonation and appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least twenty days' notice in writing of the date so assigned.]

[(d) If the party who applied for a date for the hearing of the appeal neglects or fails to file or deliver the said copies of the record within 40 days after the acceptance by the registrar of the application for a date of hearing in terms of subrule (7)(a) the other party may approach the court for an order that the application has lapsed.]

[(8)(a) Copies referred to in subrule (7) shall be clearly typed on A.4 standard paper in double spacing, paginated and bound and in addition every tenth line on every page shall be numbered.

(b) The left side of each page shall be provided with a margin of at least 35 mm that shall be left clear, except in the case of exhibits that are duplicated by photoprinting, where it is impossible to obtain a margin with the said dimensions. Where the margin of the said exhibits is so small that parts of the documents will be obscured by

binding, such documents shall be mounted on sheets of A4 paper and folded back to ensure that the prescribed margin is provided.]

(8) The record on appeal in subrule (7)(a)(i) shall be clearly typed in double spacing, the pages thereof shall be consecutively numbered and every tenth line on each page shall be numbered.

[(9) By consent of the parties, exhibits and annexures having no bearing on the point at issue in the appeal and immaterial portions of lengthy documents may be omitted. Such consent, setting out what documents or parts thereof have been omitted, shall be signed by the parties and shall be included in the record on appeal. The court hearing the appeal may order that the whole of the record be placed before it.]

(9) By agreement between the parties, exhibits and annexures having no bearing on the point at issue in the appeal and immaterial portions of lengthy documents may be omitted. Such agreement, setting out what documents or parts thereof have been omitted, shall be signed by the parties and shall be included in the record on appeal: Provided that the court hearing the appeal may order that the whole of the record be made available.

[(10) When the decision of an appeal turns exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, in which event copies shall be submitted of only such portions of the record as may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may require that the whole of the record of the case be placed before it.]

(10) When the decision of an appeal turns exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, in which event only such portions of the record as may be necessary for a proper decision of the appeal shall be delivered: Provided that the court hearing the appeal may order that the whole of the record of the case be made available.

(11) .....

(12) If the order referred to in subrule (11) is carried into execution by order of the court the party requesting such execution shall, unless the court otherwise orders, before such execution enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon such execution. The registrar's decision shall be final.

Note:

Subrule (11) has been repealed. The Rules Board intends to repeal subrules (12) and (14) which refer to subrule (11).

(13)(a) Unless the respondent waives his or her right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation, the appellant shall, before lodging **[copies of]** the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal.

(b) In the event of failure by the parties to agree on the amount of security, the registrar shall fix the amount and the appellant shall enter into security in the amount so fixed or such percentage thereof as the court has determined, as the case may be.

(14) The provisions of subrules (12) and (13) shall not be applicable to the Government of the Republic of South Africa or any provincial administration.

(15) Not later than fifteen days before the appeal is heard the appellant shall deliver a concise and succinct statement of the main points (without elaboration) which he or she intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not later than ten days before the appeal is heard the respondent shall deliver a similar statement. **[Three additional copies shall in each case be filed with the registrar.]**

(16) A notice of appeal in terms of section 76 of the Patents Act, 1978 (Act 57 of 1978), or section 63 of the Trade Marks Act, 1963 (Act 62 of 1963), may be served on the patent agent referred to in the Patents Act, 1978, or the agent referred to in section 8 of the Trade Marks Act, 1963, who represented the respondent in the proceedings in respect of which an appeal is noted.

(17) In the case of appeals to the full court in terms of the provisions of a statute in which the procedure to be followed is laid down, this rule is applicable as far as provision is made for matters not regulated by the statute.

(18) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

(19)(a) Appeals shall be heard via the e-justice system, unless the court hearing the appeal otherwise directs:

(b) Any party who does not have access to the e-justice system shall inform the registrar in writing within 15 days of notification of the date of set down of the appeal for hearing.

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.]

(i) the appellant's legal representative shall electronically forward to the registrar and the director of public prosecutions concerned, a notice containing the physical and electronic mail address of such legal representative; or

(ii) if the appellant is not legally represented then the appellant him or herself shall electronically forward or serve on the registrar or director of public prosecutions, a notice containing the full residential and postal address of the appellant and an electronic mail address, if the appellant has an electronic mail address.

(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.]**

In the case of an appeal to the full court in terms of section 315(3) of the Criminal Procedure Act 51 of 1977, the registrar shall, subject to the provisions of section 316(5)(b) of the said Act, prepare an electronic copy of the case record or parts thereof, as the case may be, and shall furnish the State with a copy and, on payment of the prescribed fee by the appellant or the appellant's legal representative, furnish the appellant or legal representative the electronic copy of the record: Provided that if the registrar is of the opinion that the appellant cannot pay the prescribed fee, the record may be furnished without payment of any fee.

(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.

Note:
Consider whether paragraph (c) should not be repealed and the JP should manage the allocation of the appeal in terms of section 8 of the Superior Courts Act, 2013.

(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 via the e-justice system: Provided that an appellant who does not have access to the e-justice system shall be assisted by the service desk or 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.]**
The ultimate responsibility for ensuring that the record on appeal and all the necessary exhibits are in all respects properly before the court shall rest on the appellant or the appellant's legal representative: Provided that where the appellant is not legally represented, such responsibility shall rest on the director of public prosecutions.

50 Civil Appeals from Magistrates' Courts

(1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.
(2) The prosecution of an appeal shall ipso facto operate as the prosecution of any cross-appeal which has been duly noted.
(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within twenty days after the date of the lapse of such appeal.
(4)(a) **[The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his**

full residential and postal addresses and the address of his attorney if he is represented.]

The appellant or such appellant's legal representative shall, within 40 days of noting the appeal, apply to the registrar in writing for the assignment of a date for the hearing of the appeal and shall simultaneously:

(i) give notice to all other parties; and

(ii) if the appellant is legally represented, such legal representative shall inform the registrar in writing of the legal representative's physical and electronic mail address; or

(iii) if the appellant is not legally represented the appellant shall inform the registrar of his or her full residential and postal addresses and an electronic mail address if the appellant has electronic mail.

(b) In the absence of such an application by the appellant, the respondent or the respondent's legal representative may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.

(c) Upon receipt of such an application **[from]** by or on behalf of the appellant or respondent, the appeal shall be deemed to have been duly prosecuted.

(5)(a) Upon receipt of such application, the registrar shall forthwith assign a date of hearing, which date shall be at least 40 days after the receipt of the said application, unless all parties consent in writing to an earlier date: Provided that the registrar shall not assign a date of hearing until the provisions of subrule (7)(a), (b), and (c) have been duly complied with.

(b) The registrar shall give the parties and the clerk of the court from which the appeal emanated, at least 20 days' written notice of the date of set down.

(6) A notice of set down of a pending appeal shall ipso facto operate as a set down of any cross-appeal and vice versa.

(7)(a) **[The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal referred to in subrule (4) lodge with the registrar two copies of the record: Provided that where such an appeal is to be heard by more than two judges, the applicant shall, upon the request of the registrar, lodge a further copy of the record for each additional judge.]**

The applicant shall simultaneously with the application for a date for the hearing of the appeal referred to in subrule (4) file with the registrar and serve on all other parties a copy of the record certified in terms of paragraph (c): Provided that where any party does not have access to the e-justice system the applicant shall furnish such party with two copies of the record.

(b) **[Such copies shall be clearly typed on foolscap paper in double spacing, and the pages thereof shall be consecutively numbered and as from second January 1968, such copies shall be so typed on A4 standard paper referred to in rule 62(2) or on**

foolscap paper and after expiration of a period of twelve months from the aforesaid date on such A4 standard paper only. In addition every tenth line on each page shall be numbered.]

The record shall be clearly typed in double spacing, the pages thereof shall be consecutively numbered and every tenth line on each page shall be numbered.

(c**)[The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar shall be certified as correct by the attorney or party lodging the same or the person who prepared the record.]**

The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and shall be certified as correct by the legal practitioner or party filing the record or by the person who prepared the record.

(d) **[The party lodging the copies of the record shall not less than fifteen days prior to the date of the hearing of the appeal also furnish each of the other parties with two copies thereof, certified as aforesaid.]**

(8)(a) **[Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of the aforegoing subrule. A list thereof shall be included in the record.]**

Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the record prepared in terms of subrule (7): Provided that a list thereof shall be included in the record.

(b)(i) With the written consent of the parties any exhibit or other portion of the record which has no bearing on the point in issue on appeal may be omitted from the record.

(ii) If a portion has been so omitted from the record, the written consent signed by or on behalf of the parties and noting the omission shall be filed, together with the incomplete record, with the Registrar.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) the court hearing the appeal may at any time request the complete original record and take cognisance of everything appearing therein.

(c) When an appeal is to be decided exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, as referred to in rule 33 of the Rules, in which event copies may be submitted to the court of such portions only of the record which in the opinion of the parties may be necessary for a proper decision of the

appeal: Provided that the court hearing the appeal may request that the entire original record of the case be placed before the court.

(9) **[Not less than fifteen days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than ten days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall be lodged with the registrar in each case.]**

(a) Not less than fifteen days before the appeal is heard the appellant shall deliver a concise and succinct statement of the main points (without elaboration) which the appellant intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point.

(b) Not less than ten days before the appeal is heard the respondent shall deliver a similar statement.

(10) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

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]**

Notwithstanding anything to the contrary in any rule contained, a notice may be served on an appellant or his or her legal representative—

(a) via the e-justice system if the appellant's legal representative or the appellant have access to the e-justice system; or

(b) on the appellant's or his or her legal representative's electronic mail address if the appellant or his or her legal representative have provided an electronic mail address; or

(c) via the sheriff or any person authorised to serve on behalf of the state, at an address on the notice of appeal or which the appellant or his or her legal representative has subsequently furnished to the registrar; or

(d) except when no other means is available, then by registered post to an address referred to in paragraph (c).

(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.]** be sent via the e-justice system or to an electronic mail address, whichever is applicable.

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 a copy 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 a copy 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;]

the registrar of the court which tried the appellant shall lodge with the registrar of the Supreme Court of Appeal a copy of the record (which shall be certified by the first-named registrar) of the proceedings in the trial court and deliver one copy to the State: Provided that instead of the whole record, with the consent of the appellant and the State, a copy (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 a copy 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.]**

the appellant may, on payment of the prescribed fees, obtain from the registrar of the court which tried the appellant, an electronic copy: 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.

53 Reviews

(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any **[inferior]** lower court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and **[delivered]** served by the party seeking to review such decision or proceedings **[to]** on the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to **[despatch]** send, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he or she has done so.

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) **[The registrar shall make available to the applicant the record despatched to him or her as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.]**

(a) The registrar shall make available to the applicant a copy of the record sent to him or her as aforesaid, in the following manner-

(i) via the e-justice system if the applicant or his or her legal representative has access to the e-justice system; or

(ii) to the applicant's or his or her legal representative's electronic mail address, if the applicant or his or her legal representative does not have access to the e-justice system but have chosen an electronic mail address for service; or

(iii) a hard copy, upon payment of the prescribed copy charge.

(b) The applicant shall thereupon furnish the registrar with a copy of such portions of the record as may be necessary for the purposes of the review, via the e-justice system or by electronic mail or by lodging a hard copy with the registrar.

(c) The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

(4) The applicant may within **[ten]** 10 days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.

(5) Should the presiding officer, chairperson or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he or she shall-

(a) within fifteen days after receipt by him or her of the notice of motion or any amendment thereof deliver notice to the applicant that he or she intends so to oppose and shall in such

notice appoint an address within 15 kilometres of the office of the registrar at which he or she will accept notice and service of all process in such proceedings; and

Note:

The Rules Board is contemplating amending the 15km service address provision in all rules containing this provision, to provide for an address within 25km of the court and an electronic mail address.

(b) within thirty days after the expiry of the time referred to in subrule (4) hereof, deliver any affidavits he or she may desire in answer to the allegations made by the applicant.

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6 pertaining to applications.

(7) The provisions of rule 6 as to set down of applications shall mutatis mutandis apply to the set down of review proceedings.

62 Filing, preparation and inspection of documents)

(1) Where a matter has to be heard by more than one judge, the registrar shall supply a copy of all pleadings, important notices, annexures, affidavits and the like **[shall be filed]** for the use of each additional judge.

(2) (a) Except where the e-justice system is used, all **[All]** documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blueblack ink on one side only of paper of good quality and of A 4 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.

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

(4) An applicant or plaintiff shall not later than five 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.

(5) Every affidavit filed with the registrar by or on behalf of a respondent shall, if he or she is represented, on the first page thereof bear the name and address of the **[attorney]** legal representative filing it.

(6) The registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein may, with leave of the registrar on good cause shown, **[may at his office]**, examine and **[make]** obtain copies of all documents in such cause—

(a) if printed, upon payment of the prescribed fees; or

(b) via the e-justice system; or

(c) electronically at an electronic mail address.