

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 979 19 November 2010

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

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

SCHEDULE

GENERAL EXPLANATORY NOTE:

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

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

Definition

1. In this schedule "the Rules" means the Rules of the Supreme Court of Appeal published under Government Notice No. R. 1523 of 27 November 1998.

Substitution of the Table of Contents

2. The following Table of Contents is hereby substituted for the Table of Contents of the Rules:

"TABLE OF CONTENTS

<i>Rule No.</i>	<i>Heading</i>
1.	Definitions
2.	Court terms
3.	Registrar's office hours
4.	General powers and duties of registrar
5.	Power of attorney
6.	Application for leave to appeal
7.	Notice of appeal
8.	Record
9.	Security
10.	Heads of argument
<u>10A</u>	<u>Practice note</u>
11.	Powers of the [Chief Justice] <u>President</u> or the Court
<u>11A</u>	<u>Non-compliance with rules</u>
12.	Application for condonation
13.	Set-down
14.	Oral argument
15.	<i>In forma pauperis</i>
16.	<i>Amicus curiae</i> submissions
17.	Taxation of costs
18.	Attorneys' fees
19.	Fees of the court
20.	Repeal of rules
21.	Short title and commencement
<u>Form 1</u>	<u>Notice of Motion</u> ".

Amendment of rule 1 of the Rules

3. Rule 1 of the Rules is hereby amended by the deletion of the word "and" after the definition of "party" and the insertion after that definition of the following definition:

"'President' means the President of the Court and, in his or her absence, includes the Deputy President of the Court;".

Amendment of rule 2 of the Rules

4. The following rule is hereby substituted for rule 2 of the Rules:

"Court TermsTerms

2. (1) There shall be four terms in each year as follows:
- 15 February to 31 March, inclusive;
 - 1 May to 31 May, inclusive;
 - 15 August to 30 September, inclusive;
 - 1 November to 30 November, inclusive.

Hearing case out of term

- (2) A matter may be heard out of term if the **[Chief Justice]** President so directs.

Commencement of term

- (3) If the day fixed for the commencement of a term is not a court day, the term shall commence on the next succeeding court day and, if the day fixed for the end of a term is not a court day, the term shall end on the business day preceding."

Amendment of rule 3 of the Rules

5. Rule 3 of the Rules is hereby amended—

(a) by the insertion before subrule (1) of the following subheading: "Hours"; and

(b) by the insertion before subrule (2) of the following subheading: "Exceptional cases".

Substitution of rule 4 of the Rules

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

"General powers and duties of registrar

Filing of documents

4. (1) (a) The registrar may refuse to accept any document tendered for lodging if, in the registrar's opinion, it does not comply with these rules: Provided that if proper copies of the rejected documents are submitted within 10 days of rejection, such lodging shall not be deemed untimely.
- (b) The registrar may provisionally accept, in lieu of the original document tendered for lodging, a copy (including a facsimile or other electronic copy) thereof, but the original shall be filed within 10 days thereafter.
- (c) The registrar may not accept documents in relation to an appeal on the date of the hearing of that appeal.

Maintaining of court records

- (2) (a) A notice of appeal or the first application in an intended appeal shall be numbered by the registrar with a consecutive number for the year during which it is filed.
- (b) Every document lodged afterwards in such a case shall be marked with that number by the party lodging it and shall not be received by the registrar until so marked.
- (c) All the documents delivered to the registrar to be filed in a case shall be filed by a registrar in a case file under the number of such case.
- (d) The registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building, except as authorised by the registrar.
- (e) Any document lodged with the registrar and made part of the Court's records shall not thereafter be withdrawn permanently from the official court files.

Inspection and copying

- (3) **[Copies of any document forming part of the Court's records may be made by any person in the presence of the registrar: Provided that the registrar shall, at the request of a party, make a copy of a recorded order, settlement or judgment on payment of the prescribed court fees and the registrar shall certify that copy or photocopy to be a true copy of the original.]**
- (a) Documents filed for Court purposes are public documents and may be inspected by any person in the presence of the registrar.
- (b) Copies of any document forming part of the Court's records may be made by any person in the presence of the registrar.
- (c) The registrar shall, at the request of a party, make a copy of a recorded order, settlement or judgment on payment of the prescribed court fees and the registrar shall certify that copy or photocopy to be a true copy of the original

Settlement of disputes with registrar

- (4) If a dispute arises as to the correctness of any ruling by the registrar, the registrar shall refer the dispute to a judge for a final ruling.

Communications with judges

- (5) Any communication directed to the President or any Judge must be done through the office of the registrar."

Substitution of rule 5 of the Rules

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

"Power of attorney

When required

5. (1) A power of attorney need not be filed, but the authority of a legal practitioner to act on behalf of any party may, within **[one month]** 10 days after it has come to the notice of any other party that the legal practitioner is so acting, or with the leave of the Court on good cause shown at any time before judgment, be disputed by notice, whereafter upon expiry of **[one month]** 10 days after service of the notice the legal practitioner shall no longer so act, unless a power of attorney is lodged with the registrar within that **[month]** period.

Format

- (2) Every power of attorney shall be signed by or on behalf of the party giving it, and shall otherwise be executed according to law.

Exemptions

- (3) No power of attorney shall be required to be filed by—
- (a) **[an attorney-general]** the National Prosecuting Authority;
 - (b) a legal practitioner acting *pro deo* or *amicus curiae*; or
 - (c) the State Attorney, any deputy state attorney or any professional assistant to the State Attorney, or any attorney instructed in writing or by telegram or facsimile by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or deputy state attorney is acting as such by virtue of any statute."

Substitution of rule 6 of the Rules

8. The following rule is hereby substituted for rule 6 of the Rules:

"Application for leave to appeal

Filing of application

6. (1) In every matter where leave to appeal is by law required of the Court, an application therefor shall be lodged in **[duplicate]** triplicate with the registrar within the time limits prescribed by that law.

Annexures required

- (2) Every such application shall be accompanied by—
- (a) a copy of the order of the court *a quo* appealed against;
 - (b) where leave to appeal has been refused by that court, a copy of that order;
 - (c) a copy of the judgment delivered by the court *a quo*; and
 - (d) where leave to appeal has been refused by that court, a copy of the judgment refusing such leave:

Provided that the registrar may, on written request, extend the period for the filing of a copy of the judgment or judgments for a period not exceeding one month.

Answer

- (3) Every affidavit in answer to an application for leave to appeal shall be lodged in **[duplicate]** triplicate within one month after service of the application on the respondent.

Reply

- (4) An applicant who applied for leave to appeal shall, within 10 days after an affidavit referred to in subrule (3) has been received, be entitled to lodge an affidavit in reply dealing strictly only with new matters raised in the answer.

Format of application, answer and reply

- (5) Every application, answer and reply—
- (a) shall—

- (i) be clear and succinct and to the point;
 - (ii) furnish fairly all such information as may be necessary to enable the Court to decide the application;
 - (iii) deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought or opposed;
 - (iv) be properly and separately paginated; and
- (b) shall not—
- (i) be accompanied by the record[, or];
 - (ii) traverse extraneous matters; or
 - (iii) exceed, for the founding affidavit and answer 30 pages each and for the reply 10 pages.

Request for further documents

- (6) The judges considering the application may call for—
- (a) submissions or further affidavits;
 - (b) the record or portions of it; and
 - (c) additional copies of the application.

Time for filing further documents

- (7) The party concerned shall lodge the required documents within the period prescribed by the registrar.

Failure to comply

- (8) If the party concerned fails to comply with a direction by the registrar or fails to cure the defects in the application within the period directed, the **[registrar shall refer the matter to the judges assigned to the application who may dispose of it in its incomplete form]** application shall lapse."

Amendment of rule 9 of the Rules

9. Rule 9 of the Rules is hereby amended—

- (a) by the insertion before subrule (1) of the following subheading: "When required"; and
- (b) by the insertion before subrule (2) of the following subheading: "Form or amount of security".

Substitution of rule 10 of the Rules

10. The following rule is hereby substituted for rule 10 of the Rules:

"Heads of argument

Filing

10. (1) Unless the **[Chief Justice]** President otherwise directs—
- (a) the appellant shall lodge with the registrar six copies of his or her main heads of argument within **[three months]** six weeks from the lodging of the record; and
 - (b) the respondent shall lodge with the registrar six copies of his or her main heads of argument within **[two months]** one month from the receipt of the appellant's heads of argument.

Urgency

- (2) When the lodging of an application or record of appeal with the registrar does not allow the heads of argument to be lodged and served in terms of subrule (1), the applicant or appellant, as the case may be, shall file the same without delay and the respondent shall thereafter file the argument in answer as soon as possible.

Failure to file

- (2A) (a) If the appellant fails to lodge heads of argument within the prescribed period or within the extended period, the appeal shall lapse.
- (b) If, after the appellant has filed heads of argument, the respondent fails to lodge heads of argument within the prescribed period or within the extended period, the appeal shall be

party, and after hearing argument, make such order as it deems fit.

Format

- (3) (a) (i) The heads of argument shall be clear, succinct and without unnecessary elaboration.
- (a) (ii) Each point should be numbered and be stated as concisely as the nature of the case allows and must be followed by a reference to the record or an authority in support of the point.
- (b) (i) The heads of argument shall not contain lengthy quotations from the record or authorities.
- (b) (ii) The heads of argument must state, in respect of each authority cited, the proposition of law that the authority states, and if more than one authority is cited for a proposition the reason for citing the additional authorities must be stated.
- (c) References to authorities and the record shall not be general but to specific pages and paragraphs.
- (d) (i) The heads of argument of the appellant shall [, if appropriate to the appeal,] be accompanied by a chronology table, duly cross-referenced, without argument.
- (d) (ii) If the respondent disputes the correctness of the chronology table in a material respect, the respondent's heads of argument shall be accompanied by the respondent's version of the chronology table.
- (e) (i) The heads of argument shall be accompanied by a list of the authorities to be quoted in support of the argument and shall indicate with an asterisk the authorities to which particular reference will be made during the course of argument.
- (e) (ii) If any such authority is not readily available, copies of the text relied upon shall accompany the heads of argument in a separate volume.
- (e) (iii) The heads of argument shall define the form of order sought from the Court.
- (f) [If reliance is placed on subordinate legislation, a copy of such legislation.] A photocopy, or a printout from an electronic database, of those provisions of any statute, regulation, rule, ordinance or by-law directly at issue, shall accompany the heads of argument in a separate volume.
- (g) The heads of argument of any appellant or respondent shall not exceed 40 pages, unless a judge, on request, otherwise orders.

Form

- (4) (a) The heads of argument shall be clearly typed on stout A4 standard paper in double-spacing in black record ink, on one side of the paper only.
- (b) All annexures to the heads of argument shall be bound separately.
- (c) Heads of argument and annexures thereto shall be bound with plastic comb binders and card covers, white for the appellant and blue for the respondent.

Cross-appeals

- (5) Cross-appeals do not require a separate set of heads of argument. In all cases where there is an appeal and a cross-appeal, the appellant's main heads of argument under rule 10(1)(b) shall follow the same pattern."

Insertion of rule 10A in the Rules

11. The following rule is hereby inserted in the Rules after rule 10:

"Practice note

Contents

- 10A.** The heads of argument of each party must be accompanied by—
- (a) a brief typed note indicating—
 - (i) the name and number of the matter;
 - (ii) the nature of the appeal;
 - (iii) a concise statement of the basis for jurisdiction in this Court, including the statutory

- (iv) if that party wishes to raise a constitutional question relating to the constitutional validity or the constitutional applicability of any law or the constitutional validity or applicability or extension of a common law rule, a concise definition of the question;
 - (v) the issues on appeal succinctly stated (for example 'negligence in MVA case', 'admissibility of a confession', 'interpretation of...');
 - (vi) an estimate of the duration of the argument;
 - (vii) if more than one day is required for argument, the reasons for the request;
 - (viii) which portions or pages of the record are in a language other than English;
 - (ix) a list reflecting those parts of the record that, in the opinion of counsel, are necessary for the determination of the appeal;
 - (x) a summary of the argument, not exceeding 100 words;
 - (xi) if a core bundle is not appropriate for the appeal, the reasons for the conclusion;
 - (xii) that there was due and timeous compliance with rule 8(8) and (9), and if not, why not; and
- (b) a certificate signed by the legal practitioner responsible for the heads of argument that rules 10 and 10A(a) have been complied with."

Substitution of rule 11 of the Rules

12. The following rule is hereby substituted for rule 11 of the Rules:

"Powers of the [Chief Justice] President or the Court

Powers

11. (1) The **[Chief Justice] President** or the Court may mero motu, on request or on application—
- (a) **[mero motu, on request or on application,]** extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules;
 - (b) give such directions in matters of practice, procedure and the disposal of any appeal, application or interlocutory matter as the **[Chief Justice] President** or the Court may consider just and expedient."

Delegation

- (2) Any power or authority vesting in the **[Chief Justice] President** in terms of these rules may be exercised by a judge or judges designated by the **[Chief Justice] President** for that purpose."

Insertion of rule 11A in the Rules

13. The following rule is hereby inserted in the Rules after rule 11:

"Non-compliance with rules

- 11A.** The Court may make an order for costs to be borne personally by any party or attorney or counsel if the hearing of the appeal is adversely affected by the failure of that party or his or her legal representative to comply with these rules."

Substitution of rule 12 of the Rules

14. The following rule is hereby substituted for rule 12 of the Rules:

"Application for condonation

Filing

12. (1) In every matter where condonation is sought, the application shall be lodged in **[duplicate] triplicate** with the registrar.

Answer

- (2) Every affidavit in answer to an application for condonation shall be lodged in **[duplicate] triplicate** with the registrar within one month after service of the application on the respondent.

Reply

- (3) The applicant shall lodge with the registrar any reply in **[duplicate] triplicate** within 10 days of receipt of the answering affidavit.

Form

- (4) Every application, answer or reply shall—
 - (a) be clear and succinct and to the point;
 - (b) furnish fairly all such information as may be necessary to enable the Court to decide the application; and
 - (c) deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which the application is sought or opposed.

Request for further documents

- (5) The judges considering the application may call for—
 - (a) submissions or further affidavits;
 - (b) the record or portions of it; and
 - (c) additional copies of the application,and the party concerned shall lodge with the registrar the required documents within the period prescribed.

Failure to comply

- (6) If the applicant fails to comply with a direction by the Court or the registrar or to complete the application within the period prescribed, the **[registrar shall refer the matter to the judges assigned to the application who may dispose of it in its incomplete form]** application shall lapse."

Substitution of rule 13 of the Rules

15. The following rule is hereby substituted for rule 13 of the Rules:

"Set-down

Notification

- 13. (1) The registrar shall, subject to the directions of the **[Chief Justice]** President, notify each party by registered letter of the date of hearing.

Address

- (2) A registered letter forwarded to a party's last-known address shall be deemed to be sufficient notice of the date of the hearing.

Non-appearance

- (3) If the applicant or appellant fails to appear at the date thus notified, the application or appeal shall be dismissed for non-prosecution, unless the Court otherwise directs.

Unavailability of counsel

- (4) Where a pending appeal is awaiting enrolment the registrar must be informed immediately—
 - (a) if counsel for either party is due to be unavailable in the next ensuing term; and
 - (b) if enrolment may clash with religious holidays which any of the legal representatives or parties in the case wish to observe."

Amendment of rule 14 of the Rules

16. Rule 14 of the Rules is hereby amended—

- (a) by the insertion before subrule (1) of the following subheading: "Time limits"; and
- (b) by the insertion before subrule (2) of the following subheading: "Language".

Amendment of rule 15 of the Rules

17. Rule 15 of the Rules is hereby amended by the substitution for subrule (4) of the following subrule:

- "(4) Any party dissatisfied with a ruling of the registrar under this rule may apply to the **[Chief Justice]** President for a revision in chambers."

Substitution of rule 16 of the Rules

18. The following rule is hereby substituted for rule 16 of the Rules:

"Amicus curiae submissions

Admission as amicus

16. (1) Subject to this rule, any person interested in any matter before the Court may, with the written consent of all the parties in the matter before the Court given not later than the time specified in subrule (5), be admitted therein as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon in writing with all the parties before the Court or as may be directed by the **[Chief Justice] President** in terms of subrule (3).

Admission by consent

- (2) The written consent referred to in subrule (1) shall, within 10 days of it having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

Amendment of consent

- (3) The **[Chief Justice] President** may amend the terms, conditions, rights and privileges agreed upon in terms of subrule (1).

Application to be admitted

- (4) If the written consent referred to in subrule (1) has not been secured, any person who has an interest in any matter before the Court may apply to the **[Chief Justice] President** to be admitted therein as an *amicus curiae*, and the **[Chief Justice] President** may grant such application upon such terms and conditions and with such rights and privileges as he or she may determine.

Time for application

- (5) An application pursuant to the provisions of subrule (4) shall be made within one month after the record has been lodged with the registrar.

Format

- (6) An application to be admitted as an *amicus curiae* shall—
- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
 - (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings;
 - (c) set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

Argument

- (7) (a) An *amicus curiae* shall have the right to lodge written argument, provided that such written argument does not repeat any matter set forth in the argument of the other parties and raises new contentions which may be useful to the Court.
- (b) The heads of argument of an *amicus curiae* shall not exceed 20 pages unless a judge, on request, otherwise orders.

Limitations

- (8) An *amicus curiae* shall be limited to the record on appeal and may not add thereto and, unless otherwise ordered by the Court, shall not present oral argument.

Filing of heads

- (9) An order granting leave to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.

Costs

- (10) An order of the Court dealing with costs may make provision for the payment of costs incurred by or as a result of the intervention of the *amicus curiae*."

Insertion of rule 16A in the Rules

19. The following rule is hereby inserted in the Rules after rule 16:

"Withdrawal or settlement

- 16A.** (1) The appellant shall inform the registrar immediately it becomes known that an appeal is to be postponed or has been settled.
- (2) An attorney who wishes to withdraw as attorney of record must comply with the procedure prescribed by Uniform rule 16(4)."

Substitution of Rule 17 of the Rules

20. The following Rule is hereby substituted for Rule 17 of the Rules:

"Taxation of costs

Taxation

17. (1) The costs incurred in any appeal or application shall be taxed by the registrar who, when exercising this function, shall be called the taxing master, but his or her taxation shall be subject to review **[of the court]** in terms of subrule (3).

VAT

(2) Value-added tax may be added to all costs, fees, disbursements and tariffs in respect of which value-added tax is chargeable.

Statement of case

(3) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master may within 20 days of the *allocatur* require the taxing master to state a case for the decision of the **[court]** President, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation, and shall embody any relevant findings of facts by the taxing master.

Contentions of parties

(4) The taxing master shall supply a copy of the stated case to each of the parties who may within 15 days of receipt of the copy submit contentions in writing thereon, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

Report

(5) Thereafter the taxing master shall frame his or her report and shall supply a copy thereof to each of the parties and shall forthwith lay the case, together with the contentions of the parties thereon and his or her report, before the **[Court]** President-

Hearing of review

(6) **[After the taxing master has so laid his or her report before the Court he or she shall, subject to the directions of the Chief Justice, notify the parties or their respective attorneys of the date of hearing]**

(a) The President or a judge or judges designated by him or her may—

(i) decide the matter upon the merits of the case and submissions so submitted;

(ii) require any further information from the taxing master;

(iii) if deemed fit, hear the parties or their advocates or attorneys in chambers; or

(iv) refer the case for decision to the Court.

(b) Any further information to be supplied by the taxing master to the judge or judges must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall forthwith lay such information together with any submissions of the parties thereon before the judge or judges.

Costs orders

(7) The judge, judges or court deciding the matter may make such order as to costs of the case as deemed fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge, judges or Court."

Commencement

21. These rules shall come into operation on 24 December 2010.