



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA

02 July 2024

Our ref: ASebola (URC 51A & URC 51B)

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED NEW UNIFORM RULES 51A (BAIL APPEALS FROM MAGISTRATES' COURTS BY AN ACCUSED) AND 51B (BAIL APPEALS FROM MAGISTRATES' COURTS BY THE DIRECTOR OF PUBLIC PROSECUTIONS)

The Rules Board for Courts of Law (Rules Board) has considered introducing new Rules for the High Court to regulate the procedure for bail appeals from the Magistrates' Courts.

Section 65 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) makes provision for an appeal by an accused with regard to bail and section 65A of the aforesaid Act provides for an appeal by the attorney-general (Director of Public Prosecutions (DPP)) against the decision of court to release the accused on bail.

As part of its rule review function, the Rules Board has considered that it is desirable to codify the procedure for bail appeals in the Uniform Rules of Court to promote access to justice, enhance the administration of justice and provide for uniformity in the application of the rules of court.

For the reasons mentioned above, the Rules Board has considered introducing Uniform Rule 51A, to regulate bail appeals from Magistrates' Courts by an accused and Uniform Rule 51B to regulate bail appeals from Magistrates' Courts by the DPP'

The Rules Board also considered that the proposed new Rules 51A and 51B should follow upon Uniform Rule 51 which regulates Criminal Appeals from Magistrates' Courts.

Draft proposed new Uniform Rule 51A is attached for consideration.

[ANNEXURE A]

Draft proposed new Uniform Rule 51B is attached for consideration.

[ANNEXURE B]

As part of its rule-making and consultation process, the Rules Board invites your comments on the proposed draft Rules marked Annexures A and B, respectively.

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985

Justice N Dambuza (Chairperson) | Justice N Mabindla-Boqwana (Vice Chairperson) | Adv S Jikela SC | Ms J Wessels | Adv K Kollapen | Mr M Maliwa | Ms N S Khanyile | Mr R R Titus | Mr V P Maluleke | Professor T Broodryk | Adv P Setati | Mr O M Krieling | Mr J Balkishun

Your comments and inputs should be submitted to the Secretariat of the Rules Board by no later than **30 August 2024** and may be sent via hand delivery, post or email to:

Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume (Andries) Street, Pretoria
Email: AmSebola@justice.gov.za

The Rules Board looks forward to receiving your inputs (if any) and thanks you for same.

Yours sincerely,

C. Kemp

C KEMP
Acting Secretary: Rules Board for Courts of Law
Email: ChKemp@justice.gov.za www.justice.gov.za

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**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

PROPOSED NEW UNIFORM RULE 51A

51A Bail Appeals from Magistrates' Courts by an accused

(1) (a) In this Rule—

'**lower court**' means a court as defined in the Criminal Procedure Act, 1977.

(b) An appeal by an accused in terms of the provisions of section 65 of the Criminal Procedure Act, 1977 (Act No 51 of 1977) may be made, upon leave to appeal having been granted by a judge in chambers, against—

- (i) the refusal by a lower court to grant the accused bail; or
- (ii) a condition of bail, including a condition relating to bail money or supplementation of a condition of bail, or against the refusal of such supplementation of condition of bail, or the imposition of such condition; or
- (iii) the court's later finding that a subsequent bail application had to be dismissed on the basis of the absence of new facts.

(2) An appeal referred to in subrule (1)(b) may be made to the High Court having jurisdiction or to any judge of that court if the court is not then sitting.

(3) (a) An appeal referred to in subrule (1)(b) shall be noted—

- (i) within 14 days of any order by the court referred to in subrule (1), or
- (ii) within such extended period as the court hearing the appeal may on application and upon good cause shown, allow.

(b) The appeal shall be noted by lodging a Notice of Appeal with the clerk or registrar of the lower court which refused or granted any order referred to in subrule (1)(b) and by serving a copy on the Director of Public Prosecutions or his or her duly authorized representative and on the magistrate or regional magistrate against whose decision the appeal is brought.

(c) The Notice of Appeal referred to in paragraph (b) shall contain—

- (i) the residential and postal address, telephone number and electronic mail address (where available) of the appellant; and/or
- (ii) if he or she is represented by a legal representative, the business and postal address, the telephone number and electronic mail address of such legal representative, where any notice may be served, or
- (iii) if he or she ceases to be so represented, an address referred to in subparagraph (i), where any notice may be served on such appellant.

(4) Every Notice of Appeal shall set out clearly and specifically the findings of fact or rulings of law appealed against.

(5) The facts upon which an appeal is brought shall be the facts which were first placed before the magistrate or regional magistrate against whose decision the appeal is brought and no new facts or facts discovered after the decision appealed against shall be relied upon.

(6) (a) Upon receipt of a Notice of Appeal the clerk or registrar of the lower court shall immediately-

(i) place the Notice of Appeal before the magistrate or regional magistrate who granted the order appealed against; and

(ii) forward a copy of the Notice of Appeal to the registrar of the High Court having jurisdiction to hear the appeal.

(b) Upon receipt of a Notice of Appeal, the magistrate or regional magistrate who granted the order appealed against, shall forthwith furnish to the aforesaid clerk or registrar written reasons showing—

(i) the facts he or she found proved;

(ii) his or her reasons for any finding of fact, including those specified in the Notice of Appeal; and

(iii) his or her reasons for ruling on any question of law or for the admission or rejection of evidence, including those specified in the Notice of Appeal.

(7) The clerk or registrar of the lower court shall immediately upon receipt of the magistrate's or regional magistrate's written reasons inform the party noting the appeal that the reasons has been furnished.

(8) The party noting the appeal may within five days of being informed that the magistrate's or regional magistrate's written reasons have been furnished, amend the grounds of appeal by notice in writing to the clerk or registrar of the lower court.

(9) The Notice of Appeal, a copy of the charge sheet, a copy of any exhibits, a copy of the record of the appearance and proceedings, the magistrate's or regional magistrate's written reasons and any amended grounds of appeal shall form part of the appeal record.

(10) The clerk or registrar of the lower court shall not later than five days of the receipt of any amended grounds of appeal, compile the appeal record, which shall be forwarded to—

(a) the registrar of the High Court having jurisdiction to hear the appeal;

(b) the party noting the appeal; and

(c) The Director of Public Prosecutions or his or her duly authorized representative.

(11) The registrar of the High Court having jurisdiction to hear the appeal shall—

(a) immediately upon receiving the Notice of Appeal, allocate a date for hearing of the appeal:

(b) set the appeal down for hearing; and

(c) inform the appellant or his or her legal representative and the Director of Public

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985

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Prosecutions or his or her duly authorized representative of the set down, of the filing of heads of argument and of such other directions as the court or judge hearing the appeal may require.

(12) (a) An appeal which is deemed urgent shall—

(i) be noted within 24 hours of the grant of any order referred to in subrule (1);

(ii) be accompanied by a certificate by the appellant or his or her legal representative stating the reasons why the appeal is considered urgent;

(iii) be set down for hearing upon not less than 48 hours' notice to the appellant or his or her legal representative and the Director of Public Prosecutions or his or her duly authorized representative and the magistrate or regional magistrate: Provided that a judge upon good cause shown may order that the appeal may be heard sooner.

(b) The record in an urgent appeal shall consist of the Notice of Appeal, the written reasons referred to in paragraph (b) of subrule (6) a copy of the charge sheet and exhibits, any amended grounds of appeal, if available, a transcript of the proceedings and, where such transcript is not available, a certificate by the appellant or his or her legal representative stating why the transcription could not be obtained.

(c) An urgent appeal may be heard by a judge in chambers if the judge hearing the appeal so directs.



**RULES BOARD FOR COURTS OF LAW
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PROPOSED NEW UNIFORM RULE 51B

51B Bail Appeals from Magistrates' Courts by the DPP

(1) (a) In this Rule—

'lower court' means a court as defined in the Criminal Procedure Act, 1977.

(b) An appeal by the Director of Public Prosecutions in terms of the provisions of section 65A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) may be made, upon leave to appeal having been granted by a judge in chambers, against—

- (i) the decision of a lower court to release an accused on bail;
- (ii) a condition of bail as contemplated in section 65(1)(a) namely, a condition relating to bail money or supplementation of a condition of bail, or against the refusal of such supplementation of condition of bail, or the refusal of imposition of such condition.

(2) An appeal referred to in subrule (1)(b) may be made to the High Court having jurisdiction or to any judge of that court if the court is not then sitting.

(3) (a) An appeal referred to in subrule (1)(b) shall be noted—

- (i) within 10 days of any order by the court referred to in subrule (1), or
- (ii) within such extended period as the court hearing the appeal may on application and upon good cause shown, allow.

(b) (i) At least 14 days before the day appointed for the hearing of the application, the Director of Public Prosecutions shall cause to be served on the accused by the sheriff, a copy of the notice.

(ii) The appeal shall be noted by lodging a Notice of Appeal with the clerk or registrar of the lower court which granted the order referred to in subrule (1)(b) and by serving a copy on the accused or his or her legal representative and on the magistrate or regional magistrate against whose decision the appeal is brought.

(c) A Notice of Appeal lodged by the Director of Public Prosecutions shall contain the business and postal address, telephone number and electronic mail address of the Director of Public Prosecutions or his or her duly authorized representative, where any notice may be served on the Director of Public Prosecutions by the accused or his or her legal representative.

(d) Within 10 days of the serving of such notice, the accused may lodge a written submission with the clerk or registrar concerned.

(4) The provisions of subrules (4) to (12) of rule 51A shall apply *mutatis mutandis* to this rule: Provided that for the purposes of this rule the references to the Director of Public Prosecutions in those subrules shall mean the accused, his or her legal representative and the references to the appellant, his or her legal representative shall mean the Director of Public Prosecutions.