



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

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

10 December 2024

Our ref: FN/CK/MS13/3/26

Your ref:

Per: e-mail

Dear Sir/Madam,

**REQUEST FOR COMMENT: UNIFORM RULE 49(13) AND MAGISTRATES COURTS' RULE 51(4)
(SECURITY FOR THE COSTS OF AN APPEAL)**

The Rules Board for Courts of Law ("Rules Board") is proposing amendments to Uniform Rule 49(13) and Magistrates Courts' Rule 51(4) (security for the costs of an appeal).

The Rules Board has considered *inter alia* that the rules mentioned above may conflict with section 34 ("Access to courts") of the Constitution of the Republic of South Africa, 1996 as the rules appear to be barring access to courts for litigants who are unable to provide security. In the light of this potential conflict the proposed amendments to Uniform Rule 49(13) and Magistrates Courts' Rule 51(4) are intended to bring the rules in line with the Constitution. The Rules Board is submitting two draft rule formulations for consideration.

The proposed draft amendments to Uniform Rule 49(13) and Magistrates Courts' Rule 51(4) are attached.

[ANNEXURE RB1]

As part of its consultative process in rule making and amendment, the Rules Board invites your comments and input on the proposed draft amendments referred to hereinabove. You are furthermore requested to indicate which of the rule formulations you prefer.

Your comments may be submitted to the Secretariat by not later than **21 February 2025**.

Comments can be sent via hand delivery or e-mail as follows:

Physical address: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria;

E-mail: MoSetshedi@justice.gov.za

Yours sincerely



F NJOBE

Secretary: Rules Board for Courts of Law

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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) | 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 | Mr S Mofokeng

PROPOSED AMENDMENT TO UNIFORM RULE 49(13)

GENERAL: EXPLANATORY NOTE:

[] Words or expressions in bold type in square brackets represent omissions from the existing rules.

_____ Words or expressions underlined with a solid line represent insertions into the existing rules.

Amendment to Uniform Rule 49(13):

OPTION A

(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.]**

No party shall be required to provide security for the costs of the appeal: Provided that the respondent may, upon good cause, apply to the court granting leave to appeal or to the court of appeal, for such security for costs to be provided by the appellant.

(b) **[In the event of failure by the parties to agree on the amount of security] Where security for costs of the appeal is ordered by the court, the registrar shall fix the amount of such security to be provided [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].**

OR

OPTION B

(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.]**

The respondent shall upon good cause apply to the court granting leave to appeal or to the court of appeal, for such security for costs to be provided by the appellant.

(b) [In the event of failure by the parties to agree on the amount of security] Where security for costs of the appeal is ordered by the court, the registrar shall fix the amount of such security to be provided [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].

PROPOSED AMENDMENT TO MAGISTRATES COURTS' RULE 51(4)

GENERAL: EXPLANATORY NOTE:

[] Words or expressions in bold type in square brackets represent omissions from the existing rules.

_____ Words or expressions underlined with a solid line represent insertions into the existing rules.

Amendment to Magistrates Courts' Rule 51(4):

OPTION A

(4) (a) **[Unless the respondent waives his or her right to security or the court 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 or clerk of the court, enter good and sufficient security for the respondent's costs of appeal].**

No party shall be required to provide security for the costs of the appeal: Provided that the respondent may, upon good cause, apply to the court granting leave to appeal or to the court of appeal, for such security for costs to be provided by the appellant.

(b) **[In the event of failure by the parties to agree on the amount of security,] Where security for costs of the appeal is ordered by the court, the registrar or clerk of the court shall fix the amount of such security to be provided **[and the appellant shall enter security in the amount so fixed or such percentage thereof as the court has determined, as the case may be]:** Provided that no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.**

OR

OPTION B

(4) (a) **[Unless the respondent waives his or her right to security or the court 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 or clerk of the court, enter good and sufficient security for the respondent's costs of appeal].**

The respondent shall upon good cause apply to the court granting leave to appeal or to the court of appeal, for such security for costs to be provided by the appellant.

(b) [In the event of failure by the parties to agree on the amount of security,] Where security for costs of the appeal is ordered by the court, the registrar or clerk of the court shall fix the amount of such security to be provided **[and the appellant shall enter security in the amount so fixed or such percentage thereof as the court has determined, as the case may be]: Provided that no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.**