

CHAPTER 8 CRIMINAL MATTERS

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8.1 PETITIONS FROM THE LOWER COURT

1. The Criminal Procedure Act now provides that an accused who wishes to note an appeal against conviction or sentence of a lower court must first apply to that court for leave to appeal. If such an application for leave is unsuccessful in the lower court, the accused may “ by petition apply to the Judge President of the Court having jurisdiction” for leave to appeal (Section 309B and 309C).
2. The Judge President has directed that in the South Gauteng High Court, Johannesburg, such a petition may be addressed to the Deputy Judge President of this court.
3. The petition from the lower court must be lodged by way of petition procedure (as was formerly the case in the Supreme Court of Appeal) and not by way of notice of motion to the motion court.
4. The petition to the Judge President or Deputy Judge President for leave to appeal against the conviction or sentence of the lower court must be lodged by delivering the original and two (2) copies to the registrar dealing with petitions who shall in turn distribute them to Judges in accordance with the directives given by the Deputy Judge President.

8.2 APPEALS

1. Criminal appeals are enrolled by the Director of Public Prosecutions.
2. When giving notice of the set down of a criminal appeal, the Director of Public Prosecutions shall, where the appeal is against conviction, specify the date by which the appellant's heads of argument must be delivered and the date by which the respondent's heads must be delivered. The Director of Public Prosecutions may, at his/her discretion or on the direction of the Deputy Judge President, where the appeal is against sentence only, specify the dates by which heads of argument are to be delivered by the respective parties.
3. Failure to file the heads of argument timeously will, as a general rule, only be condoned in exceptional circumstances. Error or oversight by counsel and legal representatives or the latter's employees will rarely be regarded as exceptional circumstances.
4. Where heads of argument have been required by the Director of Public Prosecutions, the Director of Public Prosecutions must in turn file heads of argument not later than five (5) court days before the date upon which the appeal is enrolled for hearing.
5. The presiding judge in the criminal appeal, the judge president or the deputy judge president may direct that the heads of argument be delivered earlier than the dates referred to above.
6. Counsel's names, contact details including cell phone number, must appear on the heads of argument.
7. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the judges hearing the appeal and counsel for each party. The same should apply where counsel intend to reply on unreported judgments.
8. In regard to the content of their heads of argument counsel are reminded of the dicta in *Catheram Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another* 1998 (3) SA 938 SCA at 955 B-F and *Ensign-Bickford (South Africa) (Pty) Ltd and Others v AECL Explosives and Chemicals Ltd* 1999 (1) SA 70 SCA at 84H-85C.

8.3 AUTOMATIC REVIEW

1. Criminal matters that came before the High Court on automatic review during the court term are distributed equally amongst the judges on duty save that no reviews are distributed to the judges sitting in motion court for the week that they so sit.
2. Where a particular judge has directed a query to the magistrate who presided in the matter on review and the magistrate has responded thereto, the review may be referred to any other judge who shall deal with the matter. Similarly where a particular judge has referred a review to the Director of Public Prosecutions, and the Director's opinion has been received, the review may be referred to any other judge who shall then deal with, and if possible dispose of, the matter.
3. Save in the case of the greatest urgency a query must be directed to the presiding magistrate before a judge interferes with a conviction or sentence on review. In all cases the opinion of the Director of Public Prosecutions must be obtained before a judge interferes with a conviction or sentence on review.
4. Where a review, in which the judge who refers the matter is considering the release of the accused from prison, is referred to the Director of Public Prosecutions, the judge referring the matter should inform the Director of Public Prosecutions of his consideration and the reason therefore and require a response within a stated period of time.
5. A review judgment is given by two (2) judges. If the two (2) judges agree, the release of the accused can be achieved by way of telegraphic communication.

8.4 BAIL APPEALS

1. Irrespective of the urgency thereof, a bail appeal is not heard in the motion court.
2. As soon as the proceedings in the bail application and the magistrate's judgement have been transcribed, application for the enrolment of the appeal is made to the Director of Public Prosecutions. The Director of Public Prosecutions shall then apply to the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the appeal. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the appeal.
3. Bail appeals are heard by a single judge.

8.5 REVIEWS

1. Irrespective of the urgency thereof, a review of a magistrate's decision in a criminal matter is not heard in the motion court.
2. As soon as the court papers relating to the review have been exchanged between the parties, the applicant may make application for the enrolment of the review to the Director of Public Prosecutions. The Director of Public Prosecutions shall then approach the Deputy Judge President or, in his absence, the senior judge on duty, for the allocation of a date and time for the hearing of the review. The Director of Public Prosecutions shall inform all parties of the allocated date and time of the review.
3. When allocating the date and time for the hearing of the review, the Deputy Judge President or senior judge on duty may direct when each party is to deliver heads of argument prior to the hearing of the review.
4. The practices in regard to the binding of the papers, indexing and pagination as set out in the chapter hereof dealing with motion court, apply equally to the reviews.
5. Reviews are usually heard by two judges sitting in the criminal appeal court.

8.6 TRIALS

1. Criminal trials are enrolled by the Director of Public Prosecutions. The Deputy Judge President, or the senior judge on duty, allocates the matters so enrolled to a particular judge.
2. Counsel must ensure that they are available for the entire duration of the trial. The failure to do so will result in counsel's conduct being referred to the relevant society or association of which counsel is a member for disciplinary action.
3. A postponement of a trial will normally not be granted because counsel is not available for the trial or for the entire duration of the trial.
4. Counsel shall disclose prior to the commencement of the trial any matter which may result in the matter being unable to run continuously to its conclusion.
5. Counsel will not be released from their obligation to remain in attendance for the duration of the trial.