

How to obtain transcripts from the Court

Part of the Wits Justice Project “Know Your Rights” series



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The Wits Justice Project is not a legal firm; we are a group of journalists and researchers. We are offering legal information, rather than legal advice. Please consult a qualified lawyer or paralegal if you need legal advice.

What are court transcripts?

When an accused attends a court proceeding, for example a bail application or a trial, the proceeding may be taped. Court transcripts are the written account of the recordings of court proceedings. These documents are meant to be a 'word-for-word' record of everything that occurred during a proceeding, including bail applications, witness testimony, attorney or questions, and court decisions.

The court transcript provides a written record of what occurred during the trial or proceeding. They are important because it makes sure that an accused who wants to challenge the outcome of his or her court proceeding (for example through an appeal or review), is able to use the transcripts of his or her initial court case to show that there are sufficient grounds to challenge the court's decision.

There are two ways in which an accused is able obtain the transcripts to his or her trial. The first is by lodging an appeal or review of his or her case, and the second is by sending a notice of request to the court to ask for a copy of the transcripts.

The procedure for obtaining court transcripts is similar for both the Magistrates Court and the High Court. The next few pages provide guidance of how an accused can go about obtaining transcripts in both courts.



Criminal Jurisdiction in the Courts

Most criminal cases originate in the Magistrates Courts unless it is a very serious offence. Magistrates Courts are divided into *district* or *regional* magistrates courts. The difference between these courts lies in the type of cases and sentences they are allowed to impose—this is known as a court’s “jurisdiction”. In the law, jurisdiction refers to a particular geographic area over which a court has legal authority, and also relates to the type of cases it can hear and sentences it can impose.

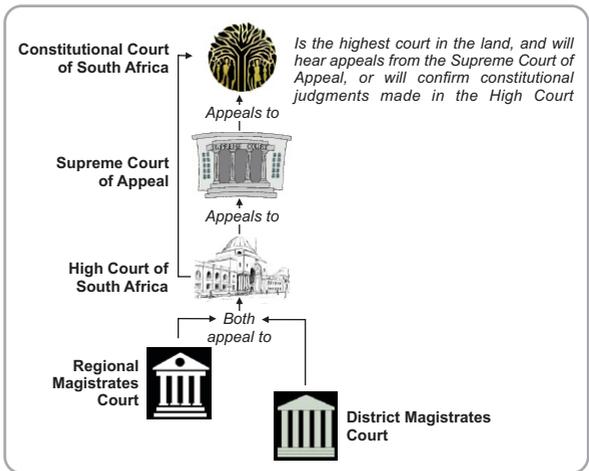
District Magistrates Courts are the lowest of all magistrates courts, and cannot hear any cases where an accused is charged with the offences of treason, murder, rape, or compelled rape.¹ District Magistrates Courts can only impose sentences that do not exceed three years. This means that District Magistrates Courts generally only hear cases that involve offences which are not very serious or “petty crimes”.



Regional Magistrates Courts can hear any case other than cases where an accused is charged with treason. The Regional Magistrates Court can impose sentences that are longer than three years, but may not exceed 15 years.² Both the District and Regional Magistrates Court are limited to a particular geographic region where it has legal authority. This means that the Randburg Magistrates Court can only hear cases which occur in that area.

High Courts also have the ability to hear criminal cases. They fall into the grouping known as the “superior courts”, which include the High Courts, the Supreme Court of Appeal and the Constitutional Court of South Africa. High Courts are able to hear a case for the first time, while the Supreme Court of Appeal can only hear cases that have been heard first by the High Court and then appealed to the Supreme Court. The High Court is a court of first instance (*court a quo*), which means that a case can be started in the High Court, but it also operates as a court of appeal for the Magistrate’s Court within its area of jurisdiction. The Constitutional Court is the legal authority on all constitutional matters, and will only very rarely hear a case that has not come to it on an appeal.

High Courts generally have a larger geographical area of legal authority than a Magistrates Court, and are able to impose higher sentences than a Magistrates Court. The Criminal Procedure Act (51 of 1977) that a High Court may sentence an accused to imprisonment, periodical imprisonment, fine, correctional supervision, imprisonment from which the



accused may be placed under correctional supervision, committal to an institution established by law, or a declaration as a habitual criminal.³ The High Court is not limited to the length of sentence it can impose, unless there is a law relating to mandatory sentencing attached to a specific crime. South Africa has some law regarding minimum sentencing for certain categories of crimes which the courts must comply with, unless special circumstances otherwise exist.⁴

¹ Section 89 of the Magistrates Court Act 32 of 1944. Compelled rape is defined as “any person (‘A’) who unlawfully and intentionally compels a third person (‘C’), without the consent of C, to commit an act of sexual penetration with a complainant (‘B’), without the consent of B, is guilty of the offence of compelled rape.” See Section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

² Section 92 of the Magistrates Court Act 32 of 1994 provides for the limitations on the type of sentences a Magistrates Court may impose.

³ Section 276(1) of the Criminal Procedure Act.

⁴ See section 51 and Schedule 2 of the Criminal Procedure Act which sets out the minimum sentencing guidelines.

Transcripts in the Magistrates Court

According to the Magistrate's Court Rules, there are two ways in which an accused is able to obtain the transcripts to his or her trial. The first is by lodging an appeal or review of his or her case to the High Court. The second is by sending a notice of request to the Clerk of the Magistrate's Court to ask for a copy of the transcripts.

Option One: Lodging an Appeal or Review

When an accused lodges an appeal under section 309(1)(a) of the Criminal Procedure Act, or a review in terms of section 302 of the Criminal Procedure Act, the Clerk of the Magistrates Court must compile the record of the case and submit this to the judicial officer who will be hearing the appeal or review in the High Court. The record will include any shorthand notes taken during the original trial, as well as a transcription of any recordings of the original case. This is an automatic process that is required by Rule 66(1) of the Magistrates Court Rules and the Criminal Procedure Act.

Usually, the accused's legal representative will apply for an appeal or review orally at the close of the accused's initial trial, although it is possible to apply for an appeal or review after the close of proceedings on paper. Once an appeal or review has been lodged, the Clerk of the Magistrates Court will locate the recordings of the trial and send them to the transcribers. Once the trial has



been transcribed, the transcription will be returned to the Clerk and forms part of the record of proceedings. The Clerk of the Magistrates Court will only be able to locate the recordings of the proceedings if the accused (or his or her legal representative) provides the Clerk with the case number of the trial.

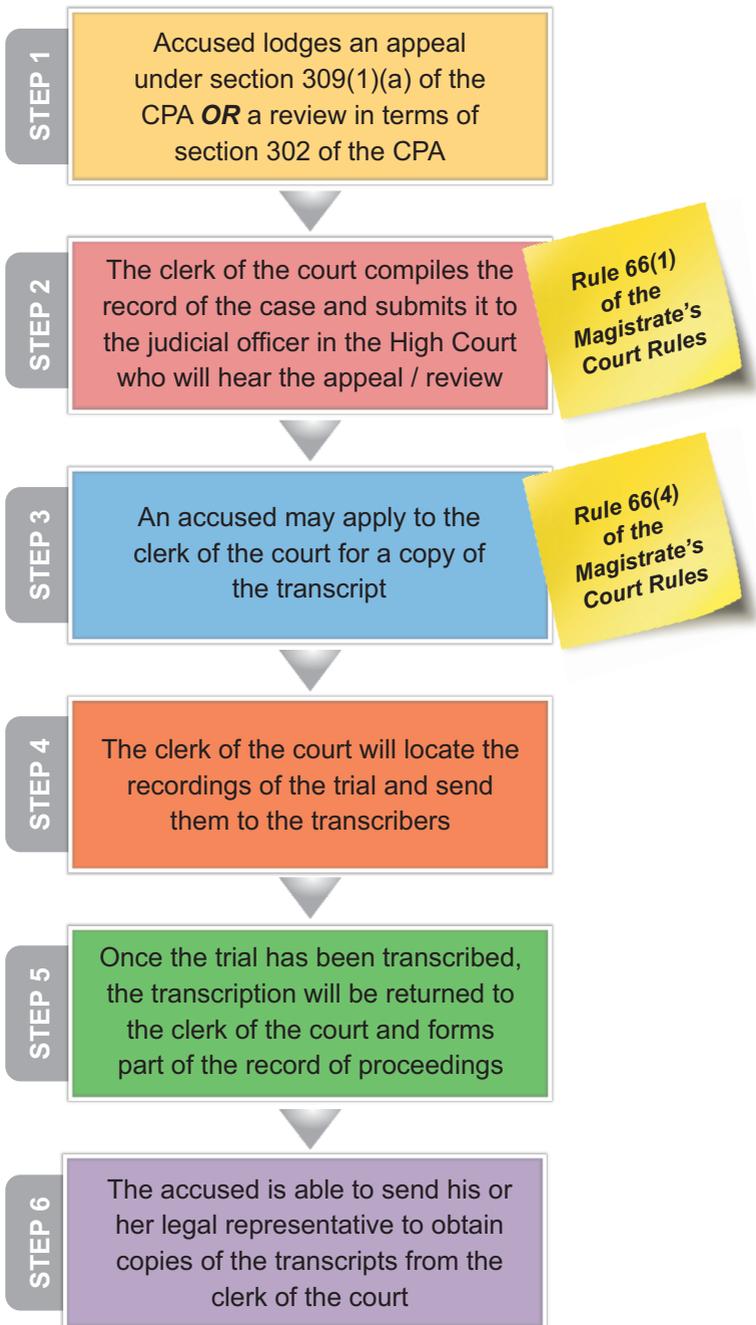
To obtain copies of the transcript in a case of appeal or review, an accused may apply to the Clerk of the Magistrates Court for a copy of the transcript in terms of Rule 66(4) of the Magistrate's Court Rules. In most cases, an accused will be able to request his or her legal representative to go to the Magistrates Court and obtain a copy of the transcript on his or her behalf. If the request is made during the

appeal or review process, the State will cover the cost of the copying of the transcript.

If an accused does not have a legal representative who can go to Court on his or her behalf, it is possible to write a letter to the Appeal's Clerk to request a copy of the transcript. In this case, payment for the copying of the transcripts may be requested before the Clerk of the Magistrates Court will provide the transcripts.

If an accused is unable to pay for the costs of the transcripts, he or she may apply to the Court and request that transcripts be released for a reduced fee or for free. The accused must show the Court that there are good reasons for requesting the transcripts, and show that he or she is unable to afford the costs of the transcripts due to personal circumstances. This application must be made in terms of Rule 66(9) of the Magistrate's Court Rules.

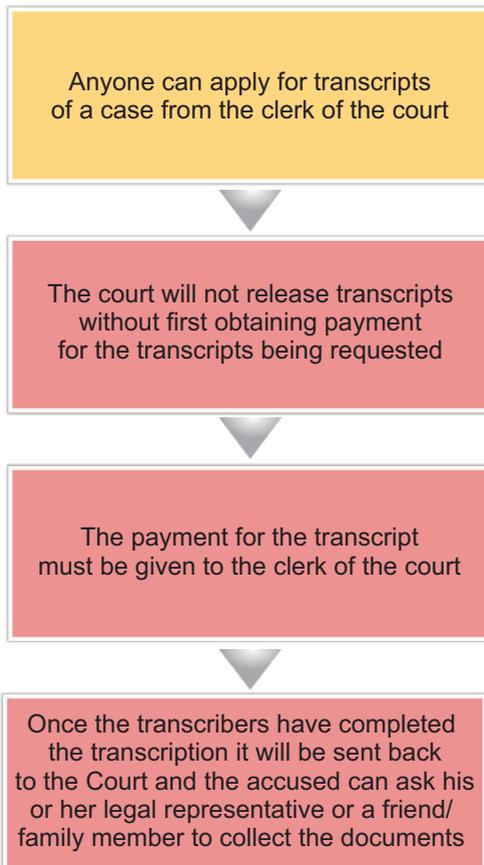
Once an application has been made, the Clerk will send a notice to the Legal Aid Board to determine whether the accused complies with the requirements for obtaining State-funded transcripts, and also to determine whether the Legal Aid Board can be of any assistance in the case. Once a reply has been received from the Legal Aid Board, the Clerk will arrange for the transcripts to be transcribed and have them posted to the address of the prison where the offender is being housed.



Option Two: Application for Transcripts in terms of Rule 66(4)(a) of the Magistrate's Court Rules

The second way to obtain transcripts is to apply for them from the Clerk of the Magistrate's Court in terms of Rule 66(4)(a) of the Magistrate's Court Rules. Anyone can apply for transcripts of a case under this Rule, however, the court will not release transcripts without first obtaining payment for the transcripts being requested.

The payment for the transcript must be given to the Clerk before he or she will order a copy of the transcripts to be made. The costs of the transcripts will vary depending on how long the recordings of the case are. In general, however, a rough estimate of R25.00 per page is charged.



The processing times of the transcripts are extensive, and depend on the length of the recordings, the ability of the court to locate the disks, and the backlog of cases being requested. If all is working in order and the CD / recording of the trial has been located, the transcribers say that the usual processing time for an average transcription is between six weeks and two months. This does not include the time it takes for the transcripts to be delivered back to the court.



Transcripts in the High Court

Obtaining transcripts from the High Court is a very similar process to that in the Magistrates Court.

An accused who has lodged an appeal or review from the High Court to the Supreme Court of Appeal will follow a similar process. In terms of the Uniform Rules of the High Court, an accused who lodges an appeal may request a copy of the record of proceedings from the Registrar of the High Court upon the payment of a fee (Uniform Court Rule 52(c)).

If the accused cannot afford the fee for the record, he or she may apply to the Registrar of the High Court in terms of Uniform Court Rule 52(2), who will make a final decision on the matter.

Accused who have had their cases heard in the High Court may similarly apply to the Registrar of the High Court under Uniform Court Rule 39(19) for a copy of the record of proceedings upon payment of a fee.

Tracking your Transcripts

It can be very frustrating to try and locate transcripts within the court process. Some courts are very overburdened and struggle to process the thousands of applications for transcripts daily. Depending on which court your case was heard at, the time periods for obtaining transcripts can be lengthy.



In order to track the progress of your transcripts, you must ensure that you have the case number of your trial, and a copy of any applications made to the Clerk of the Magistrates Court or Registrar of the High Court in respect of your transcripts.

The Clerk or the Registrar are usually the best people to contact when it comes to finding out where your transcripts are. If possible, the best option is to ask your legal representative to go to court on your behalf. If this is not possible (as will usually be the case where a legal representative works with Legal Aid South Africa), it can be useful to ask a friend or family member to go to court to find out where your transcripts are.

Another option is to contact iAfrica Transcriptions who are the most common company used to transcribe court documents by courts in Gauteng. Contacting iAfrica may help to determine whether your recordings have been sent to the transcribers and how much longer it will take them to complete the transcription.

iAfrica Transcriptions details are as follows:

PRETORIA OFFICE:	012 326 1881
JOHANNESBURG OFFICE:	011 333 8989
POLOKWANE OFFICE:	015 291 5522
CAPE TOWN OFFICE:	021 425 0975
GEORGE OFFICE:	044 871 0846

EMAIL: info@iafricatranscriptions.co.za

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