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LABOUR COURT RULES

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE LABOUR COURT

[Updated to 12 July 2024]

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The Rules Board has, in terms of section 159(3) of the Labour Relations Act, 1995 (Act 66 of 1995), made the following rules to regulate the conduct of proceedings in the Labour Court.

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MOTION PROCEEDINGS

GENERAL RULES APPLICABLE TO REFERRALS FOR ADJUDICATION, MOTION PROCEEDINGS AND APPEALS TO THE COURT

GENERAL PROVISIONS

COMMENCEMENT OF RULES AND REPEAL

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1. Definitions

Any expression in these rules that is defined in the Labour Relations Act, 1995 (Act 66 of 1995) has the same meaning as in that Act and:

"Act" means the Labour Relations Act, 1995 (Act 66 of 1995), and includes any regulation made in terms of that Act;

"association" means any unincorporated body of persons;

"court" means the Labour Court established by section 151 of the Act and includes any judge of the court;

“day” means any day other than a Saturday, Sunday, public holiday, or any day within the period between 16 December and 15 January (both dates inclusive), and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;

“deliver” means serve on other parties and file with the registrar;

“Deputy Judge President” means the Deputy Judge President of the court;

“file” in relation to any document means to lodge that document with the registrar;

“firm” means a business carried on by a sole or multiple owners or body corporate under a separate name;

“issue” in relation to a document means the allocation of a case number by the registrar;

“Judge President” means the Judge President of the court;

“notice” means a written notice, and **“notify”** means to notify in writing;

“party” means any party to court proceedings and includes a person representing a party in terms of section 161 of the Act;

“public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

“registrar” means the registrar of the court appointed in terms of section 155(1) of the Act and includes any deputy registrar or other person authorised to act in the place of the registrar or deputy registrar;

“representative” means a person referred to in section 161(1) of the Act;

“rules” means these rules and includes any footnote to a rule; and

“serve” means to serve in accordance with rule 9, and 'service' has a corresponding meaning.

THE COURT, SERVICE AND FILING OF PROCESS, SITTINGS, DRESS AND MODES OF ADDRESS

2. Office hours of registrar

(1) The offices of the registrar will be open to the public every Monday to Friday excluding public holidays, from 08h00 – 13h00 and 14h00 – 15h00.

(2) Despite subrule (1), the court or the registrar may direct that any document be issued or filed on any day and at any time.

3. Seat where proceedings must be initiated and court sittings

(1) Unless the Judge President directs otherwise, proceedings must be initiated at the seat of the court nearest the place where the dispute which is the subject matter of the proceedings arose.

(2) The court calendar year is divided into four court terms. The duration of each court term will be determined by the Judge President, in advance, subject to the provisions of sections 8 and 9 of the Superior Courts Act, 2013 (Act 10 of 2013).

(3) Only urgent applications will be heard during recess, except that by directive of the Judge President or the Deputy Judge President, in exceptional circumstances, other matters may be allocated for hearing during recess.

(4) The court will commence sitting at 10h00. The court adjourns at 11h15 and resumes sitting at 11h30. The court adjourns at 13h00 and resumes sitting at 14h00. The court adjourns for the day at 16h00. The presiding judge may deviate from these times if the judge considers it necessary.

4. Labour Court as court of record

(1) A record must be kept of:

(a) all judgments and rulings given by the court;

(b) any evidence given in court;

(c) any objection made to any evidence received or tendered;

(d) any on-the-spot inspection and any matter recorded as a result of that inspection; and

(e) the proceedings of the court generally.

(2) The record referred to in subrule (1), including electronic recordings of proceedings, must be kept in a form that the court deems expedient.

(3) Transcripts of electronic recordings or a portion of the transcript or recording may be made on request of the court or any of the parties on payment of the fee prescribed from time to time.

(4) Any transcript of electronic recordings must be certified as correct by the person making such notes or transcript and must be filed with the registrar, together with one copy of the transcript.

(5) Any transcript of electronic recordings certified as correct, is deemed to be correct unless the contrary is proved.

(6) Any person may make copies of any document filed in a particular matter after obtaining permission from the registrar to do so and on payment of the fee prescribed from time to time, and in the presence of the registrar unless a judge directs otherwise.

5. Dress code

(1) The dress code for legal practitioners is that which applies in the High Court.[1]

[1] Proper dress for attorneys comprises a black stuff attorney's gown, a white shirt, a white lace jabot, dark pants or skirt, and black or dark closed shoes. For junior counsel, proper dress comprises a black stuff gown, a plain black long-sleeved jacket, a white shirt or blouse closed at the neck, a white lace jabot or white bands, dark pants or skirt, and black or dark closed shoes. Proper dress for senior counsel comprises a silk gown, a silk waistcoat, a white shirt or blouse closed at the neck, a white lace jabot or white bands, dark pants or skirt, and her black or dark closed shoes.

(2) Representatives who are not legal representatives and who enjoy right of appearance in terms of section 161(b) to (e) of the Act, and persons who represent themselves, must be formally dressed.

6. Modes of address and introduction

(1) The mode of address in the court is that which applies in the High Court.[2]

[2] A judge must be addressed and referred to as **"My Lord"** or **"My Lady"**.

(2) It is not necessary for representatives and unrepresented parties to introduce themselves to the presiding judge each time they appear; representatives appearing before a particular judge for the first time should present themselves at chambers 15 minutes prior to the hearing to introduce themselves. Representatives whose opponents are unrepresented need not introduce

themselves. Otherwise, representatives and unrepresented parties should attend at a judge's chambers only when directed to do so or when there is a specific issue that the representatives wish to draw to the judge's attention, for example, the fact of a settlement or a request that a matter be stood down.

(3) In all proceedings, all representatives and those parties who are not represented must complete an attendance form recording their names and contact numbers, including any telephone and messaging app number and email address. The form must be handed to the presiding judge's secretary in court before the matter is called.

7. Issue of documents and registrar's duties

(1) Any party initiating any proceedings must have the document commencing the proceedings **("initiating document"**) issued by the registrar in the following manner:

(a) The initiating document must be sent to the registrar's office by email, with a request for a case number.

(b) The registrar will issue a case number.

(c) The case number must be inserted on the initiating document before it is served and filed.

(2) If in a period of 3 months from the date on which the initiating document is filed, no further documentation is filed or other action taken by the initiating party, the file will automatically be closed and archived, provided that the registrar has afforded the initiator 15 days' notice in writing of the closure and archiving. Any file that is archived may be retrieved only in terms of an order of court, on good cause shown.

(3) The parties must ensure that every document subsequently filed in respect of the same proceedings, including any interlocutory and related applications, are marked with the same case number.

(4) The registrar may refuse to accept any document that is not properly marked with the correct case number.

(5) The registrar may request a party to correct any patent defect or error in any document that is filed.

(6) If a party refuses to correct any document after a request by the registrar in terms of subrule (5), the registrar must send the document to a judge in chambers for direction.

(7) The registrar must keep the court's records and must not allow them to leave the court building without the registrar's prior written authorisation.

8. Form of documents

(1) All legal processes filed with the court must be typed or printed on one side only, on standard A4 paper; in font size 12 point; with theme fonts either Arial or Times New Roman; line spacing set at 1.5; and with margins of at least 2 cm on all sides of the page.

(2) The registrar may refuse to accept any legal process that does not comply with subrule (1) except that in the case of a lay person, the registrar may accept legal process that in the opinion of the registrar demonstrates sufficient compliance.

9. Service of documents

(1) A document that must be served on any party may be served in any one of the following ways:

(a)

(i) by handing a copy of the document to the party or a representative of that party who is authorised to accept service on behalf of the party;

(ii) by leaving a copy of the document at the party's place of residence or business with any other person who is apparently at least 16 years old and apparently in charge of the premises at the time;

(iii) by leaving a copy of the document at the party's place of employment or with any person who is apparently at least 16 years old and apparently in authority;

(iv) by emailing the document to the other party, if the other party has an email address;

(v) by handing a copy of the document to any representative authorised in writing to accept service on behalf of the person;

(vi) if the person has chosen an address or email address for service, by leaving a copy of the document at that address or by emailing it to that email address;

(b)

(i) if the party is a company or other body corporate, by serving a copy of the document on a responsible employee of the company or body corporate at its registered office

or its principal place of business within the Republic, or its main place of business within the magisterial district in which the dispute first arose or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;

(ii) if the party is a trade union or employers' organisation, by serving a copy of the document on a responsible employee who at the time of service is apparently in charge of the main office of the union or employers' organisation or the union's or employers' organisation's office within the magisterial district in which the dispute first arose, or, if there is no person willing to accept service, by affixing a copy of the document to the main door of that office;

(iii) if the party is a partnership, firm or association, by serving a copy of the document on a person who at the time of service is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of such partnership, firm or association or, if such partnership, firm or association has no place of business, serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of such association, as the case may be;

(iv) if the party is a municipality, by serving a copy of the document on the municipal manager, or any person acting on behalf of that person;

(v) if the party is a statutory body, by serving a copy on the secretary or similar officer or member of the board or committee of that body or any person acting on behalf of that body; or

(vi) if the party is the State or any organ of state defined in terms of section 239 of the Constitution, or any department of national or provincial government (collectively referred to as an “organ of State”), by serving a copy both on a responsible employee in the office of the state attorney situated in the area or province in which the process is initiated, and the responsible office of the organ of State against which the claim is brought;

(c) by any other means authorised by the court.

(2) Service is proved in court in any one of the following ways:

(a) by an affidavit deposed to by the person who effected service;

(b) if service was effected by email, by an affidavit of the person who effected service. The deponent must provide proof of the correct email address, confirm that the whole of the email was sent, and confirm that a named person telephonically acknowledged receipt of the whole of the email;

(c) if the person on whom the document has been served is already on record as a party, by a signed acknowledgement of receipt by the person on whom the document was served; or

(d) by return of the sheriff.

(3) Service of all subsequent documents and notices, not being a document commencing proceedings, may be effected in one of the following ways:

(a) by hand at the physical address provided; or

(b) by email to the address provided.

(4) An address for service or email address may be changed by delivery of notice of a new address after which service may be effected as provided at the new address.

(5) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by electronic mail.

(6) If the court is not satisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems appropriate

10. Filing of documents

(1) Documents may be filed with the registrar in any one of the following ways:

(a) by handing the document to the registrar; or

(b) by sending the document by email.

(2) A document is filed with the registrar:

(a) on the date on which the document is handed to the registrar; or

(b) on the date on which the email is received by the registrar.

(3) In the case of filing by email, the original document must be lodged with the registrar within 10 days of it being emailed.

REFERRALS FOR ADJUDICATION

11. Statement of claim

(1) A document initiating proceedings, known as a statement of claim, may be filed by a plaintiff following the form set out in Form 1 and must:

(a) contain a heading with the following information:

(i) the title of the matter;

(ii) the case number assigned by the registrar to the matter;

(iii) an address of the person delivering the document at which that person will accept notices and service of all documents in the proceedings: and

(iv) a notice advising the other party that if that party intends defending the matter, a notice of intention to defend must be delivered in terms of subrule (1) within 10 days of service of the statement of claim, failing which the matter may be placed before a judge in chambers for default judgment, and an order for costs may be granted against that party;

(b) contain a substantive part with the following information:

(i) the names, descriptions and addresses of the parties;

(ii) a clear and concise statement of the material facts, in chronological order, on which the party relies, in sufficiently particular terms to enable any opposing party to plead to the statement of claim;

(iii) a clear and concise statement of the legal issues that arise from the material facts, in sufficiently particular terms to enable any opposing party to plead to the statement of claim; and

(iv) the relief sought;

(c) be signed by the party or the parties to the proceedings where there is more than one party, or the representative of the party or parties, as the case may be;

(d) express all dates, sums and numbers contained in the document in figures;

(e) be accompanied by a schedule listing the documents that are material and relevant to the claim; and

(f) be delivered.

(2) In the case of a referral by the director of the Commission for Conciliation, Mediation and Arbitration in terms of section 191(6) of the Act:

(a) the party who initially referred the dispute to the Commission must deliver the statement of claim within 10 days of the date on which the director notified the party of the referral of the dispute to the court; and

(b) the statement of claim must include a copy of the director's decision.

12. Notice of intention to defend

(1) Every party on whom a statement of claim is served (the defendant) is allowed 10 days after service of the statement of claim to deliver a notice of intention to defend.

(2) In any action against any minister, deputy minister, or officer of the State in his or her official capacity, the period allowed for delivery of a notice of intention to defend must be not less than 20 days after service of the statement of claim, unless the court has authorised a different period.

(3) When a defendant delivers the notice of intention to defend, the defendant must provide a full residential or business address, postal address, and email address (where available) and state which address has been nominated for service of all subsequent documents and notices in the action.

(4) A notice of intention to defend may be delivered after the expiry of the period referred to in subrules (1) and (2) but before default judgment has been granted: provided that the plaintiff is entitled to seek costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

13. Statement of response

(1) If a defendant has delivered a notice of intention to defend, the defendant must deliver a statement of response in response to the statement of claim.

(2) The statement of response must, with the changes required by the context, contain the same information required by rule 11(1) and in addition, either admit or deny or confess and avoid all the material facts stated in the statement of claim, or state which of those facts are not admitted and to what extent.

(3) A statement of response must be delivered within 15 days of the date on which the notice of intention to defend is delivered.

(4) If a defendant counterclaims, the counterclaim must be delivered with the statement of response.

(5) The defendant's statement of response must avoid reference to **"points *in limine*"**. Preliminary issues must be raised by way of exception in terms of rule 14 or a special plea, or other appropriate pleading.

14. Exceptions and applications to strike out

(1) If a statement of claim is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, any defendant may, within the period allowed for the filing of any subsequent pleading, deliver an exception and request the registrar to set it down for hearing, except that when a party intends to take an exception that a statement of claim is vague and embarrassing, that party must afford the plaintiff an opportunity to remove the cause of complaint within 15 days.

(2) Any exception must be delivered within 10 days of the date on which the reply to the notice referred to in subrule (1) is received or from the date on which the reply is due.

(3) The exception must clearly and concisely set out the grounds on which it is founded.

(4) If any pleading contains averments which are scandalous, vexatious or irrelevant, the opposing party may, within the period allowed for filing any subsequent pleading, apply for the striking out of that matter and may request the registrar to set the application down for hearing on the interlocutory roll.

15. Replication and plea in reconvention

(1) Within 15 days of the service of the statement of response and subject to subrule (2), the plaintiff where necessary must deliver a replication to the statement of response, and a statement of response to any counterclaim. The statement of replication must comply with rule 13.

(2) No replication or subsequent pleading which would be a mere joinder of issue or a denial of allegations in the previous pleading is necessary.

(3) Where a replication or subsequent pleading is necessary, a party may join issue on the allegations in the previous pleading. To the extent that the party has not dealt specifically with the allegations in the statement of response or such other pleading, the joinder of issue shall operate as a denial of every material allegation affecting the pleading on which issue is joined.

(4) The plaintiff in reconvention may, subject to subrule (2), within 10 days after delivery of the statement of response in reconvention, deliver a replication in reconvention.

(5) Further pleadings may, subject to the provisions of subrule (2), be delivered by the respective parties within 10 days after the previous pleading delivered by the opposite party. Any further pleadings must be designated by the names by which they are customarily known.

16. Failure to deliver pleadings - barring

(1) If any party fails to deliver any pleading within the time limit established by these rules or within any extended period allowed in terms of the rules, any other party may by notice require the party in default to deliver the pleading within 5 days of the day on which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time stipulated, or any further period agreed by the parties, shall be in default of filing the pleading and ipso facto barred.

17. Extension of time and removal of bar

(1) The court may on application and on good cause shown make any order extending or abridging any time prescribed in relation to any referral for adjudication, or extending or abridging any time for doing any act or taking any step in connection with any such proceedings, or removing any bar, on any terms that the court considers just.

(2) Any extension in terms of subrule (1) may be ordered even though the application is not made until after expiry of the time prescribed, and the court ordering any extension may make any order it deems appropriate.

18. Close of pleadings

(1) Pleadings in matters referred for adjudication shall be considered closed:

(a) if either party has joined issue without alleging any new matter, and without adding any further pleading;

(b) if the last day allowed for filing a statement of response or any subsequent pleading has elapsed and it has not been filed;

(c) if the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar; or

(d) if the parties are unable to agree as to the close of pleadings, the registrar will refer the matter to a judge in chambers to declare them closed.

19. Special cases and adjudication on points of law

(1) The parties to a dispute may, after proceedings have been instituted, agree on a written statement of facts and/or law in the form of a special case to be adjudicated by the court. This must be done under oath so as to constitute evidence before court.

(2) The written statement must set out the facts agreed on, the questions of law in dispute between the parties and their respective contentions. The statement must be divided into consecutively numbered paragraphs and any copies of documents necessary to enable the court to decide on the questions must be annexed.

(3) The special case must be set down for hearing in a manner provided for trials and opposed applications, whichever is the more convenient.

(4) At the hearing, the court and the parties may refer to the whole of the contents of any documents. The court may draw any inference of fact or of law from the facts and documents as if proved at trial.

(5) If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led separately from any other question, the court may make an order directing the disposal of that question in any manner that it deems fit and order that further proceedings be stayed until the question has been disposed of.

(6) The court may on application of any party make an order contemplated in subrule (5), unless it appears that the questions cannot conveniently be decided separately.

(7) When giving its decision on any question in terms of subrule (5), the court may give judgment as may be appropriate and may give any direction with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal of the proceedings.

(8) In any referral to the court for adjudication, if the question in dispute is one of law and the parties are agreed on the facts, the facts may be placed before court on affidavit at the trial and the court may give judgment without hearing any viva voce evidence.

20. Amendments to pleadings

(1) Any party that wishes to amend any pleading or a document other than a sworn statement that has been filed in connection with any referral for adjudication, that party must notify all other parties of the intention to amend and furnish particulars of the amendment.

(2) The notice referred to in subrule (1) must state that unless an objection to the proposed amendments is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to any proposed amendment must clearly and concisely state the grounds on which the objection is founded.

(4) If a valid objection is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, make an application for leave to amend.

(5) If no objection is delivered, every party that received notice of the proposed amendment will be deemed to have consented to the amendment and the party who gave notice of the proposed amendment must, within 10 days of the expiration of the period referred to in subrule (2), effect the amendment as contemplated in subrule (6).

(6) Unless the court otherwise directs, a party entitled to amend a pleading must effect the amendment by delivering each relevant page in its amended form.

(7) Any party affected by the amendment may, within 15 days after the amendment has been effected or within any other period that the court may determine, make any consequential adjustment to the documents filed by that party.

(8) A party giving notice of amendment in terms of subrule (1) is, unless the court otherwise directs, liable for the costs occasioned to any other party.

(9) Despite anything to the contrary in this rule, the court may at any stage before judgment and upon application, grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.

21. Default judgments

(1) An application for default judgment must be made after the expiry of the dies for the filing of a statement of response in terms of rule 13 and in accordance with Form 2. The application must be served on all defendants and filed with the registrar.

(2) The application must be accompanied by an affidavit deposed to by the plaintiff in which the plaintiff:

(a) confirms the correctness of the facts averred in the statement of claim and the relief sought;

(b) confirms that service of the statement of claim has been effected in terms of the provisions of the rules and attaches the service affidavit;

(c) if the claim is one of compensation, records the plaintiff's remuneration at the time that the claim arose and any details of employment subsequent to that date; and

(d) deposes to any other facts that the plaintiff considers relevant.

(3) Default judgments will ordinarily be dealt with by a judge in chambers. If the judge is satisfied that the requirements for default judgment have been met, the judge may grant judgment by default in favour of the plaintiff.

(4) If the judge is not satisfied that the above requirements for default judgment have been met or considers that it is not appropriate to grant default judgment in chambers, the judge may issue a directive as to any further requirements that the plaintiff must meet, and may require the plaintiff to appear in court on a designated day to give or lead evidence or provide any document the judge may require in support of the plaintiff's claim.

22. Pre-trial conference by parties

(1) The parties must convene and attend a pre-trial conference within 15 days of the close of pleadings. In a pre-trial conference, the parties must attempt to reach consensus on the following:

(i) any means by which the dispute may be settled;

(ii) facts that are common cause;

(iii) facts that are in dispute;

(iv) the issues that the court is required to decide;

(v) the precise relief claimed, and if compensation is claimed the amount of the compensation and how it is calculated;

(vi) discovery and the exchange of documents, and the preparation of a paginated bundle of documentation in chronological order;

(vii) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they purport to be;

(viii) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent;

(ix) which party must begin;

(x) the necessity for any on-the-spot inspection;

(xi) securing the presence at court of any witness;

(xii) the resolution of any preliminary points that are intended to be taken;

(xiii) the exchange of witness statements;

(xiv) expert evidence;

(xv) any other means by which the proceedings may be shortened;

(xvi) an estimate of the number of days required for the hearing; and

(xvii) whether an interpreter is required and if so for which languages.

(2) The estimate of the number of days required for the hearing must include an estimate of the number of witnesses to be called by each party, and a separate motivation should the estimate exceed 3 days. If the duration of a hearing is expected to exceed 5 days, a prior directive must have been obtained from the Judge President, which must be attached to the pre-trial minute.

(3) Subject to rule 23, the parties must draw up and sign a minute dealing with the matters set out in subrule (1).

(4) The plaintiff must file the minute of the pre-trial conference within 5 days of the conclusion of the conference, but in any event no later than 30 days after the close of pleadings.

23. Additional requirements for pre-trial conferences: specific disputes

(1) In addition to dealing with all the issues prescribed by rule 22 the parties must specifically deal with and address and record in the minute their responses to the questions recorded in subrule (2) below.

(2) When the issue in dispute is that of an alleged unfair dismissal for operational requirements, the following questions must be answered:

(a) Does the plaintiff admit that in general there was a need to retrench?

(b) If the plaintiff does not admit that there was in general a need to retrench, the plaintiff must state the factual basis for the failure to admit this. The defendant must provide a response.

(c) If the plaintiff contends there were alternatives to the retrenchment, the plaintiff must state what these alternatives were and the defendant must provide a response.

(d) If the fairness or otherwise of the selection criteria is in dispute, the plaintiff must state the basis for contending that the selection criteria was unfair. The defendant must respond.

(e) If the plaintiff contends that someone else should have been selected for retrenchment, the plaintiff must provide the name of that person and why that person should have been selected. The defendant must respond.

(f) The plaintiff must set out in sufficient particularity in what respect it is alleged that the termination of employment was procedurally unfair. The defendant must respond.

(g) If meetings took place between the parties, the parties must each set out when the meetings took place, whether the meetings constituted consultations in the retrenchment process and whether minutes exist for the meetings. If minutes exist, the parties must record the status of the minutes. If the plaintiff's case is that the meetings did not constitute consultation(s), the plaintiff must indicate the basis thereof. The defendant must respond.

(3) When the issue in dispute is that of an alleged unfair dismissal for participation in unprotected strike action, the following questions must be answered:

(a) Does the plaintiff admit that there was a strike?

(b) If the plaintiff admits that there was a strike, the plaintiff must indicate whether the strike action was protected or unprotected.

(c) If the plaintiff contends that a strike did not occur or if the plaintiff admits that any strike that did occur was unprotected, the plaintiff must state the factual basis for any such contention. The defendant must provide a response.

(d) If ultimatums were issued by the defendant, the defendant must set out when and at what time the ultimatums were issued, how the ultimatums were conveyed to employee parties/unions, and whether the ultimatums were in any way adhered to. The plaintiff must provide a response.

(e) Does the plaintiff allege any provocation on the part of the defendant? If so, the plaintiff must set out the factual basis for so contending. The defendant must provide a response.

(f) If the plaintiff disputes that the sanction of dismissal was inappropriate, the plaintiff is required to set out the factual basis for so contending. The defendant must provide a response.

(g) The plaintiff must set out with sufficient particularity in what respect it is alleged that the termination of employment was procedurally unfair. The defendant must provide a response.

(4) When the issue in dispute is that of an alleged automatically unfair dismissal, the following must be addressed:

(a) The plaintiff is required to set out the basis on which it is contended that the dismissal is automatically unfair.

(b) If the plaintiff contends that the dismissal is based on discrimination, the plaintiff must set out the factual basis for so contending and the defendant must provide a response.

(c) If the defendant concedes that there is discrimination, but contends that the discrimination is fair, the defendant must set out the factual basis for so contending and the plaintiff must provide a response.

(5) When the issue in dispute is that of an allegation of unfair discrimination, the following questions must be addressed:

(a) Does the plaintiff allege direct discrimination, and, if so, on what ground or grounds? The facts upon which such alleged discrimination is alleged must be recorded and the basis of the unfairness of such alleged discrimination must be recorded.

(b) Does the defendant admit having committed the act of direct discrimination, but wishes to justify it? If so, the defendant must, with reference to the facts and the grounds upon which it relies, record the basis of its justification.

(c) Alternatively, if the defendant denies the allegations, the facts and grounds of such denial must be recorded.

(d) Does the plaintiff allege indirect discrimination on the part of the defendant?

(e) If so, the facts upon which this allegation is based must be recorded, as well as why such discrimination is alleged to be unfair.

(f) Does the defendant admit the alleged act of indirect discrimination but wishes to justify it? If so, the defendant must, with reference to the facts and the grounds upon which it relies, record the basis of its justification.

(g) If the defendant denies indirect discrimination, the facts and grounds of such denial must be recorded.

(h) Is there agreement on the overall onus to prove? The parties must record such agreement or alternatively their respective averments in relation to thereto.

(i) Insofar as the plaintiff claims compensation for the alleged act(s) of discrimination, it must state how the amount of compensation is calculated and how it is connected to the alleged act of discrimination. The defendant must provide a response.

24. Fast tracking

(1) When the issue in dispute concerns the dismissal of 10 or more employees whose reinstatement is sought, the plaintiff must on receipt of a notice of intention to defend deliver a letter to the registrar marked for the attention of the Judge President, setting out:

(a) the names of the parties to the trial and the case number;

(b) the nature of the dispute; and

(c) an estimate of the duration of the trial.

(2) The Judge President may appoint a judge immediately to undertake the case management of the file in terms of this rule and ensure an expeditious hearing.

(3) Matters that have been designated for fast tracking will be set down for trial on an expedited basis by the judge appointed to manage the file. The judge may follow the provisions of rule 25 relating to case management but may dispense with or otherwise depart from that rule whenever the interests of justice and expeditious dispute resolution so require.

25. Case management

(1) Once a pre-trial minute has been filed, or the time period for the filing of the pre-trial minute has expired, whichever occurs first, the registrar must forward the file to a judge in chambers.

(2) The judge may certify that the case is trial-ready, and issue directives as to the further conduct of the matter, including but not limited to a directive that the registrar allocate a trial date and issue a notice of set down on notice to all parties.

(3) If the parties have not filed a pre-trial minute as required by rule 22, or the judge decides that the pre-trial minute is inadequate, the judge must direct that a supplementary pre-trial minute be filed within 10 days of the date of the directive. If the parties are unable to file a pre-trial minute on account of any disagreement between them, the plaintiff must file an explanation of why agreement on the content has not been obtained, and the judge must then issue an appropriate directive.

(4) The judge may decide to convene a formal case management conference. Should the judge decide to do so, the registrar must:

(a) notify the parties of the date, time and place of the case management conference; and

(b) notify the plaintiff that at least 48 hours before the time appointed for the case management conference, the court file must be suitably ordered, secured, paginated and indexed;

(5) At the case management conference, the case management judge must require the parties to address:

(a) the soliciting of admissions and the making of enquiries from and by the parties with a view to narrowing the issues in dispute and curtailing the need for oral evidence;

(b) the time periods within which the parties propose that any matters outstanding be addressed to bring the case to trial readiness; and

(c) the identity of the witnesses that the parties intend to call and, in broad terms, the nature of the evidence that they will give, and any other matter germane to expediting the trial readiness of the case.

(6) The case management judge must engage the parties or their legal representatives with a view to proactively expedite the further conduct of the case towards trial readiness and trial-efficiency. Parties and their representatives must be adequately prepared and sufficiently instructed to address meaningfully and constructively issues that arise at the case management conference.

(7) Without limiting the scope of judicial management at a case management conference, the case management judge may:

(a) explore the prospect of settlement on some or all of the issues in dispute;

(b) propose voluntary mediation;

(c) deal with the granting or refusal of any amendments to the pleadings, summarily, if appropriate;

(d) determine any matters concerning the discovery of documents and the holding of any inspection in loco; summarily if appropriate;

(e) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and

(f) identify and record the issues to be tried.

(8) At the conclusion of the case management process, the judge may:

(a) certify the case as trial ready;

(b) refuse certification and put the parties on terms to achieve trial readiness, and direct them to report to the court at a further case management conference on a fixed date;

(c) make any order in respect of any interlocutory issue, or refer any interlocutory issue to the motion court for determination;

(d) make any appropriate order or directive to expedite trial readiness;

(e) direct a separation of issues in appropriate cases;

(f) direct the plaintiff to file a minute of the case management conference;

(g) make any order as to costs consistent with section 162 of the Act, including an order for costs *de bonis propiis* against any representative whose conduct has frustrated the objectives of the case management process;

(h) in instances of flagrant or repeated neglect to comply with the rules or case management directives or procedures, strike out claims or defences with any appropriate order as to costs.

(9) If a case management judge strikes out a claim or defence in terms of this rule, the judge must formally record the reasons for making the order and include those reasons in the record for the purposes of any application for leave to appeal.

(10) A case management judge exercising powers in terms of these rules is deemed to have been sitting for the purpose in a court duly constituted in terms of section 152 of the Act.

(11) The record of the case management conference including the minutes submitted by the parties to the case management judge and any directives issued by the judge must be included in the court file placed before the trial judge, who is entitled to have regard to the record and directives in relation to the conduct of the trial for any purpose, including any application for postponement and issues of costs.

(12) Judicial case management in terms of these rules must be construed and applied according to the principle that the primary responsibility to prepare for trial, comply with the rules and act professionally in expediting the case towards trial and adjudication, remains the primary responsibility of the parties and their legal representatives.

(13) The Judge President may, by directive, declare that the whole or any part of this rule shall not apply to any seat of the court.

26. Enrolment for hearing

(1) When the registrar receives a certificate of trial-readiness issued by a judge, the registrar must enrol the matter and notify the parties of the time, date and place that has been allocated for the hearing.

(2) Once a trial has been set down for hearing, it may be removed from the trial roll only with the consent of the Judge President, or in the case of matters subject to case management, by the appointed judge.

27. Discovery of documents

(1) A document or recording not disclosed may not, except with the leave of the court being granted on whatever terms the court deems fit, be used for any purpose at the hearing by the person who was obliged to disclose it, except that the document or recording may be used by a person other than the person who was obliged to disclose it.

(2) If the parties cannot reach an agreement regarding the discovery of documents and recordings, either party may apply to the court for an appropriate order, including an order as to costs.

(3) For the purpose of this rule, a recording includes a soundtrack, film, magnetic tape, record or any other materials on which visual images, sound or other information can be recorded.

28. Expert witnesses

(1) Any party intending to call an expert witness must deliver a notice to that effect, together with a summary of the evidence and opinion of the expert witness, at least 20 days before the date of the hearing. If the parties agree on calling a single expert, that expert's summary and opinion must be delivered within the same period.

(2) If a party fails to comply with subrule (1), the court may decline to admit the evidence, or admit it only on good cause shown and may make any appropriate order as to costs.

29. Pagination, indexing, binding and general preparation of papers in trials

(1) Within 10 days of close of pleadings, the plaintiff must do the following:

(a) collate, number consecutively and suitably bind all the pleadings relating to the trial as a separate bundle and ensure that they are in the court file;

(b) collate, number consecutively and suitably bind all the notices relating to the trial as a separate bundle and ensure that they are in the court file;

(c) collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto; and

(d) prepare and attach an index to the pleadings bundle, the notices bundle and any pre-amendment pleadings bundle and the pre-trial bundle respectively. The index must briefly describe each pleading or notice as a separate item.

(2) When binding the pleadings and notices, care must be taken to ensure that the method of binding does not hinder the turning of pages.

(3) The pleadings and notices must be bound in volumes of not more than 120 pages, unless the papers are collated and bound in a lever arch file which in any event, may not exceed 200 pages per file.

(4) The pleadings bundle must only contain the original pleadings (as amended, if applicable). If the original pleadings are lost or misplaced copies may be filed; in this event, the documents must be clearly marked as copies.

(5) If a document or documents attached to the pleadings or contained in the bundles as referred to above are not readily legible, the plaintiff must ensure that legible typed copies of the document or documents are provided.

(6) If the plaintiff has not complied with these subrules, this is not an automatic basis for any other party obtaining a postponement of the matter. The presiding judge, on the day on which the matter is heard, may make any order the judge deems appropriate which may include any order as to costs, including an order of costs *de bonis propriis*.

30. Bundles of documents prepared for trial

(1) If a party or the parties to a trial intend utilising documents in the trial, the documents must be collated chronologically, numbered consecutively and suitably bound.

(2) Each bundle must be indexed. The index must briefly describe each document in the bundle as a separate item.

(3) The documents should be bound in volumes of not more than 120 pages, unless the papers are collated and bound in a lever arch file which in any event, may not exceed 200 pages per file.

(4) The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle.

(5) The presiding judge may at any time during a trial direct that the bundle of documents be reconstituted.

(6) If unnecessary documents are included in the bundle, the court may on the application of any party to the trial or *mero motu* and in the absence of good cause shown, make a punitive cost order.

31. Practice note for trials

(1) The plaintiff's representative must file a practice note by email in respect of the trial enrolled for hearing, marked for the attention of the registrar of the seat where the trial is to be heard. In:

(a) Johannesburg: johannesburglabourcourt@judiciary.org.za;

(b) Cape Town: capetownlabourcourt@judiciary.org.za;

(c) Gqeberha: gqeberhalabourcourt@judiciary.org.za; and

(d) Durban: durbanlabourcourt@judiciary.org.za.

(2) The practice note must be filed at least 10 court days before the date on which the trial is enrolled for hearing.

(3) The practice note must set out:

(a) the names of the parties to the trial and the case number;

(b) the date of the hearing;

(c) the name of each party's representative, and their cell phone and landline numbers;

(d) the relief sought at the trial by the party on whose behalf the representative completing the practice note appears;

(e) the nature of the dispute;

(f) an estimate of the probable duration of the trial;

(g) the prospect of any settlement;

(h) whether any preference is sought for the hearing of the trial and if so the motivation therefore (e.g. whether a witness or representative from out of town will be testifying or appearing); and

(i) any issue or consideration that would interfere with the immediate commencement and the continuous running of the trial to its conclusion, including the preparation of bundles and the indexing and pagination of the papers.

(4) If the practice note is not provided timeously, the plaintiff runs the risk of the matter not being allocated a judge or the matter being removed from the roll with an appropriate order for costs.

(5) If one of the parties is unrepresented, the other (represented) party must file the practice note required in terms of this rule.

32. Roll call

(1) In Johannesburg, a roll call will ordinarily be held at 09h45 on each Monday and Thursday during the court term, of all trials enrolled for hearing on that day.

(2) If a trial cannot be allocated for hearing on the day for which it is enrolled for hearing, the parties' representatives must attend at the chambers of the judge holding roll call on the next and subsequent days until the trial is allocated for hearing, or the matter otherwise dealt with.

33. Postponement of trials

(1) If it becomes apparent to the judge calling the roll that the parties have unreasonably underestimated the number of days for which a hearing is sought and which were allocated for the hearing, the judge may strike the matter from the roll, with any appropriate order for costs.

(2) No trial should be commenced where any issue or consideration exists, to the knowledge of any party's representative, which would interfere with the completion of the trial.

(3) Representatives must ensure that they are available for the entire duration of the trial. A postponement of a trial will not ordinarily be granted because a representative is not available for the trial or the entire duration of the trial.

(4) A judge hearing a trial will generally not postpone a trial so that the trial becomes part-heard, and a trial will ordinarily continue for no longer than the allocated number of days.

34. Part-heard trials

(1) If a trial is part-heard, unless otherwise arranged with the presiding judge in consultation with the registrar, the plaintiff must apply for a date for the continuation of the trial by delivering a letter to the registrar. The letter must set out:

(a) the names of the parties to the action and the case number;

(b) the name of the judge before whom the trial became part-heard;

(c) the date when the trial became part-heard;

(d) an estimate of the probable duration for the completion of the trial; and

(e) whether a copy of the record of the part-heard portion of the trial is necessary and available.

(2) The registrar must inform the parties in writing of the date allocated for the completion of the trial.

MOTION PROCEEDINGS

35. Applications generally

(1) An application must be brought on notice of motion to all persons who have an interest in the application.

(2) In any application in which the applicant considers that the proceedings ought appropriately to be case-managed by a judge, the applicant may, when the application is filed, deliver a letter to the Judge President setting out the nature of the dispute and the reasons why the application ought to be case-managed.

(3) The Judge President or a judge designated for the purpose may approve the case management of the application, in which case the provisions of rule 25 will apply, with the necessary changes.

(4) The notice of application must be signed by the party bringing the application. The application must be delivered and must contain the following information:

(a) the title of the matter;

(b) the case number assigned to the matter by the registrar;

(c) the relief sought;

(d) the address of the party delivering the document at which that party will accept notices and service of all documents in the proceedings;

(e) a notice advising the other party that if it intends opposing the matter, that party must deliver an answering affidavit within 10 days after the application has been served, failing which the matter may be heard in the party's absence and an order of costs may be made; and

(f) a schedule listing the documents that are material and relevant to the application.

(5) The application must be supported by affidavit. The affidavit must clearly and concisely set out:

(a) the names, description and addresses of the parties;

(b) a statement of the material facts, in chronological order, on which the application is based, which statement must be sufficiently particular to enable any person opposing the application to reply to the document;

(c) a statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable any party to reply to the document; and

(d) the relief sought.

(6) A notice of opposition and an answering affidavit may be delivered by any party opposing the application.

(7) A notice of opposition and an answering affidavit must be delivered within 10 days from the day on which the application is served on the party opposing the application.

(8) An answering affidavit must respectively contain, with the changes required by the context, the same information required by subrules (2) and (3).

(9) The party initiating the proceedings may deliver a replying affidavit within 5 days from the day on which any notice of opposition and answering affidavit are delivered.

(10) The replying affidavit must address only those issues raised in the answering affidavit and may not introduce new issues of fact or of law.

(11) The registrar must notify the parties of the date, time and place for the hearing of the application.

36. Filing of answering and replying affidavits

(1) If the respondent has delivered a notice of intention to oppose but fails to deliver an answering affidavit within the prescribed time limit, the registrar must at the applicant's request enrol the application on the unopposed motion roll and serve a notice of set down to all parties.

(2) If the respondent or the applicant has filed its opposing or replying affidavits respectively outside the time period set out in the rules, there is no need to apply for condonation for the late filing of such affidavits unless the party upon whom the affidavits are served delivers a notice of objection to the late filing of the affidavits.

(3) The notice of objection must be served and filed within 10 days of the receipt of the affidavits after which time the right to object shall lapse.

37. Review applications

(1) In any application in which a party seeks to review a decision or proceedings of a body or person in terms of section 145 or section 158(1)(g) or (h) of the Act, rules 35 and 36 apply, subject to the following requirements.

(2) The notice of motion must:

(a) call upon the person or body to show cause why the decision or proceedings should not be reviewed and corrected or set aside;

(b) call upon the person or body to dispatch to the registrar, within 10 days after receipt of the notice of motion, the complete record of the proceedings sought to be reviewed, and to notify the parties that this has been done; and

(c) subject to subrules (3) and (4), be supported by an affidavit setting out the grounds on which the applicant relies to have the decision or proceedings reviewed and corrected or set aside.

(3) The affidavit filed by an applicant seeking to have an award or ruling corrected or set aside must contain no more than a concise statement of the grounds of review.

(4) The statement of the grounds for review must do no more than:

(a) state whether the whole or part of the award or ruling is sought to be reviewed;

(b) record, with reference to the award or ruling and/or the conduct of the decision-maker concerned, each error and/or misdirection that he/she is alleged to have committed and which is alleged to constitute a defect in the proceedings, in point form;

(c) where relevant, state concisely why these errors and/or misdirections caused the result of the award or ruling to be unreasonable, and/or why the award is irrational in relation to the evidence led during the proceedings under review, without making abstract statements of principle lacking in necessary detail.

(5) In exceptional circumstances, where it is necessary to incorporate factual averments in the relevant affidavits, the factual averments must be concisely stated. Any party that abuses this exception by filing affidavits containing irrelevant factual averments will be penalised by an appropriate order for costs.

(6) The award or ruling that is sought to be reviewed must be annexed to the affidavit.

(7) The person or body upon whom a notice of motion is served must comply timeously with the direction in the notice of motion in terms of subrule (2).

(8) If the person or body fails to comply with subrule (7), or fails within the required period to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction.

(9) The registrar must notify the parties when a record has been received and may be uplifted by the applicant.

(10) The applicant must collect the record within 5 days of the date of the notice.

(11) The registrar must make available to the applicant the record which is received on such terms as the registrar deems appropriate to ensure its safety.

(12) The applicant must transcribe and make copies of the record and file only those portions of the record as may be necessary for the purposes of the review, and certify each copy as true and correct. If the applicant contends that the decision under review should be set aside because it is unreasonable or irrational in relation to the evidence that served before the decision-maker, the complete record must be transcribed.

(13) The applicant must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body; provided that, should it transpire that the person or body upon whom a notice of motion is served in terms of subrule (2) has failed to deliver a complete record, the 60-day period contemplated in subrule (14) will commence running only once a complete record has been delivered.

(14) Transcribed records must be delivered within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

(15) If the applicant fails to file a transcribed record within the prescribed period, the applicant will be deemed to have withdrawn the application, unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. Any consent given must be expressed in writing and filed with the registrar.

(16) If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all other parties, and answering and replying affidavits may be filed within the time limits prescribed by rule 35.

(17) The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record.

(18) An application that is deemed to have been withdrawn may not be reinstated without an order of court, granted on application by the defaulting party, on good cause shown.

(19) The costs of transcription of the record, copying and delivery of the record and reasons, if any, must be paid by the applicant and then become costs in the cause.

(20) The applicant must within 5 days after the transcribed record has been filed either:

(a) by delivery of a notice of amendment and supplementary affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or

(b) deliver a notice that the applicant stands by its notice of motion.

(21) A supplementary affidavit filed in terms of subrule (20) may do no more than supplement the grounds for review recorded in the founding affidavit or abandon any one or more of them. An applicant who abuses this subrule by including irrelevant or repetitive material in a supplementary affidavit risks an adverse order as to costs.

(22) Any person wishing to oppose the granting of the order prayed in the notice of motion must, within 10 days after receipt of the record and notice of amendment or notice that the applicant stands by its notice of motion, deliver an affidavit in answer to the allegations made by the applicant.

(23) An answering affidavit filed in terms of subrule (22) may do no more than record, in concise terms, the grounds on which the application is opposed.

(24) The applicant may file a replying affidavit within 5 days of receipt of an answering affidavit. A replying affidavit may do no more than respond to the grounds on which the application is opposed, without any repetition of the content of the founding and supplementary affidavits.

(25) After receipt of any replying affidavit or the expiry of the time limit for filing a replying affidavit (whichever occurs first), the applicant must index and paginate the file in terms of rule 29(3), with separate sections containing the pleadings and affidavits, the relevant notices, and the record of the proceedings under review, and within 10 days of the expiry of the time limit contemplated in this subrule, apply to the registrar for a hearing date. If the applicant fails to apply for a hearing date within the prescribed period, the respondent may apply for a date.

(26) If the application is unopposed, the application for a hearing date must be made within 10 days of the last date for the filing of an answering affidavit.

(27) If the record of the proceedings under review has been lost, or if the recording of the proceedings is inaudible or of such poor quality so as to compromise the integrity of the record, the following shall apply:

(a) the applicant may, after all reasonable attempts have been made to either find or reconstruct the record, approach the Judge President for a direction on the further conduct of the review application;

(b) the Judge President will allocate the file to a judge for a direction; and

(c) the allocated judge must meet with the parties to discuss, among other things, the remittance of the matter to the person or body whose award or ruling is under review or where practicable, a direction to the effect that the relevant parts of the record be reconstructed, or that the application may be heard without reference to the record.

38. Urgent applications

(1) A party that applies for urgent relief must file an application that complies with the requirements of the rules relating to applications generally.

(2) The affidavit in support of the application must also contain:

(a) the reasons for urgency and why urgent relief is necessary;

(b) the reasons why the requirements of the rules were not complied with, if that is the case; and

(c) if a party brings an application in a shorter period than that provided for in terms of section 68(2) of the Act, the reasons why a shorter period of notice should be permitted.

(3) The party bringing the application or that party's representative must sign the application.

(4) The registrar must fix a date, time and place for the hearing of the application, having regard to the degree of urgency for which the applicant contends.

(5) Except in the case of an *ex parte* application, as soon as the registrar has allocated a date, time and place for the hearing, the party bringing the application must serve a copy of the application, together with the information obtained from the registrar, on the respondent.

(6) Except in the case of an *ex parte* application, the party bringing the application must satisfy the court when the application is heard that a copy of the application has been served on the respondent or that sufficient and adequate notice of the content of the application was brought to that party's attention by other means.

(7) The applicant must have available for the court a draft of the order sought, both in hard copy and electronic format.

(8) Unless otherwise ordered, a respondent may anticipate the return date of an interim interdict on not less than 48 hours' notice to the applicant and the registrar.

39. Applications in restraint of trade

(1) Unless circumstances warrant a more urgent hearing, an application in restraint of trade will be enrolled only where the procedure outlined below has been strictly adhered to by the applicant.

(2) An applicant must make provision in its notice of motion for the exchange of four sets of affidavits.

(3) An applicant when prescribing the time periods to be adhered to for the filing of affidavits in its notice of motion must afford:

(a) the respondent at least 7 days to file an answering affidavit;

(b) the applicant at least 5 days to file a replying affidavit; and

(c) the respondent at least 5 days to file a fourth affidavit.

(4) At the time of launching the application, the applicant must apply to the registrar to allocate a provisional date for the hearing of the application, such date having been calculated so as to take into account the mandatory time periods prescribed above and the filing of heads of argument as contemplated below. The applicant must also insert a date, not less than 7 calendar days after launching the application, on which the application will be heard if it is unopposed.

(5) The application will be provisionally enrolled for hearing during the week following the week in which heads of argument have been exchanged.

(6) The applicant must ensure that its notice of motion and founding affidavit are properly paginated before launching the application.

(7) The parties are required to paginate any subsequent affidavits (as contemplated in subrule (3)) before such affidavits are filed.

(8) The parties must adhere to the prescribed time periods for the filing of their affidavits.

(9) Upon receipt of the fourth affidavit, or upon the expiry of the dies for the filing thereof, if no fourth affidavit is filed, the applicant must immediately prepare an index for the application, and upon completion thereof serve it on the respondent.

(10) The parties must simultaneously serve and file heads of argument within 5 days from the date of delivery of the index or upon the expiry of the dies for the filing thereof.

(11) At the time of filing its heads of argument, the applicant must make application for final enrolment of the matter. The application will be finally allocated for hearing during the week following delivery of the heads of argument. Either party's failure to file heads of argument in accordance with this subrule will not preclude the matter from being allocated for hearing.

40. Heads of argument and practice notes in motion proceedings

(1) In unopposed motions, at the applicant's request, the registrar will set down the application on the unopposed motion roll to be heard by the judge presiding in motion court. Heads of argument need not be filed unless the application is a review application.

(2) In opposed motion proceedings, the applicant must deliver heads of argument within a period of 15 days after the date on which pleadings close.

(3) The heads of argument must be clear, succinct and without unnecessary elaboration, and comply with the requirements of rule 48.

(4) The respondent must deliver heads of argument no later than 15 days prior to the hearing of an opposed application. If the applicant has failed to file heads of argument, the respondent must in any event file its heads within the above time limit.

(5) In cases where a party for whatever reason fails, neglects or refuses to file heads timeously, the court may make a punitive costs order against the defaulting party and may in certain circumstances strike the matter from the roll.

(6) Where a party is able to do so, heads of argument should, in addition to being delivered in terms of the rules, be sent by email to the applicable address:

(a) Johannesburg: johannesburglabourcourt@judiciary.org.za;

(b) Cape Town: capetownlabourcourt@judiciary.org.za;

(c) Gqeberha: gqeberhalabourcourt@judiciary.org.za; and

(d) Durban: durbanlabourcourt@judiciary.org.za.

(7) The heads must indicate, above the heading of the matter, the date on which the matter has been set down to be heard, if it is so set down.

(8) Each party must ensure that the heads of argument have been placed in the court file.

(9) A judge hearing an opposed or unopposed application may at any time direct that all or any of the parties file supplementary heads of argument on any specified issues.

(10) The failure by one party to file heads of argument shall not be a basis upon which the other party would be entitled to the postponement of the hearing, and it shall remain up to the presiding judge to determine how the matter shall be conducted in such event.

(11) All heads of argument filed in motion proceedings must comply with rule 48.

(12) The applicant or the applicant's representative must file a practice note by email in respect of any application enrolled for hearing.

(13) The practice note must comply with rule 31, with the necessary changes.

GENERAL RULES APPLICABLE TO REFERRALS FOR ADJUDICATION, MOTION PROCEEDINGS AND APPEALS TO THE COURT

41. Interlocutory applications and procedures not specifically provided for in other rules

(1) The following applications must be brought on notice, supported by affidavit:

(a) interlocutory applications;

(b) other applications incidental to, or pending proceedings referred to in these rules or that are not specifically provided for in the rules; and

(c) any other applications for directions that may be sought from the court.

(2) The requirement in subrule (1) that affidavits must be filed does not apply to applications that deal only with procedural aspects.

(3) In the exercise of its powers and in the performance of its functions, or in any incidental matter, the court may act in a manner that it considers expedient in the circumstances to achieve the objects of the Act.

(4) The registrar may set down an interlocutory application for hearing simultaneously with the main application.

42. Extension of time limits and condonation

(1) The court may extend or abridge any period prescribed by these rules on application, and on good cause shown, unless the court is precluded from doing so by an Act.

(2) If a party fails to comply with any notice or direction given in terms of these rules, any interested party may apply on notice for an order that the notice or direction be complied with within a period that may be specified, and that failing compliance with the order, the party in default will not be entitled to any relief in the proceedings.

(3) The court may, on good cause shown, condone non-compliance with any period prescribed by these rules.

43. Withdrawals and postponements

(1)

(a) A party who has initiated proceedings and wants to withdraw the matter must deliver a notice of withdrawal as soon as possible.

(b) If costs are not tendered, any other party may apply on notice for costs.

(2) If the parties reach a settlement, the party who initiated the proceedings must notify the registrar of the settlement as soon as possible.

(3) If the parties agree to postpone any matter enrolled for hearing, the party who initiated the proceedings must notify the registrar as soon as possible. The registrar will place the agreement before a judge in chambers, who will decide whether the matter may be postponed and request the registrar to advise the parties accordingly.

44. Set down of postponed matters

(1) If a matter is postponed to a date to be determined in the future, any party to the matter may apply to the registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the court orders otherwise.

(2) The registrar must allocate a time, date and place for the hearing and send a notice of set down to each party.

(3) If a matter is postponed in court to a specific date, the registrar need not send a notice of set down to the parties.

45. Matters struck off the roll

(1) If a matter is struck off the roll because a party who initiated the proceedings was not present, the matter may not be re-enrolled without that party having provided the court with a satisfactory explanation, under oath or affirmation, for the failure to attend court.

(2) The affidavit or affirmation must be delivered and the registrar must place it before a judge in chambers, to decide whether the matter may be re-enrolled.

46. Rescissions and variations

(1) The court may, in addition to any other powers it may have:

(a) of its own motion or on application of any party affected, rescind or vary any order or judgment:

(i) erroneously sought or erroneously granted in the absence of any party affected by it;

(ii) in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(iii) granted as the result of a mistake common to the parties, or

(b) on application of any party affected, rescind any order or judgment granted in the absence of that party.

(2) Any party desiring any relief may, within 15 days of acquiring knowledge of the defect or order or judgment:

(a) under subrule (1)(a) apply on notice to all parties whose interests may be affected by the relief sought;

(b) under subrule (1)(b) may apply on notice to all interested parties to set aside the order or judgment and the court may, on good cause shown, set aside the order or judgment on such terms as it deems fit.

47. Consent to orders

(1) A party who opposes any proceedings may at any time consent to the whole or any part of the relief sought in the proceedings.

(2) The consent referred to in subrule (1) must be in writing, signed and dated by the party consenting to the relief, and witnessed.

(3) When the party who initiated the proceedings receives the consent, that party may apply to the registrar in writing for an order to be made by a judge in chambers in accordance with the consent.

(4) The court may not grant any order which has the effect of reviewing and setting aside any administrative act, award or ruling, only on the basis of the consent of the parties.

48. Heads of argument

(1) In addition to any other rule regulating the submission of heads of argument, the court may at any time call on the parties to deliver concise heads of argument on the main points that they intend to argue.

(2) All heads of argument filed in terms of these rules must:

(a) include a chronology of the material facts;

(b) in its references to evidence contain a page and paragraph or line reference to the record or bundle of documents;

(c) include a list of the authorities referred to in the heads of argument;

(d) in its reference to a text book specify the author, title, edition and page number in that order (for example: Smith, Labour Law, 2nd ed, 44);

(e) in its first reference to a reported case must contain the full name of the case, the year, volume, commencement page, division of the court, and page and margin reference to which specific reference is made; and

(f) in a review application, refer to the record of the proceedings under review using footnotes.

49. Submissions by an *amicus curiae*

(1) Any person interested in any proceedings before the court may, on application to the Judge President or any judge authorised by the Judge President, be admitted to the proceedings as an *amicus curiae* on the terms and conditions and with the rights and privileges determined by the Judge President or any judge authorised to deal with the matter.

(2) The terms and conditions and rights and privileges referred to in subrule (1) may be amended in accordance with directions given by the Judge President or the judge authorised to deal with the matter.

(3) An application in terms of subrule (1) must be made not later than 15 days before the date of hearing.

(4) An application to be admitted as an *amicus curiae* must:

(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; and

(c) clearly, succinctly and without unnecessary elaboration set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and that person's reasons for believing that the submissions will be useful to the court and different from those of the other parties.

(5) An *amicus curiae* has the right to lodge written argument, provided that the written argument:

(a) is clear, succinct and without unnecessary elaboration;

(b) does not repeat any matter described in the argument of the other parties; and

(c) raises new contentions that may be useful to the court.

(6) In the event of new matters or arguments being raised by the *amicus curiae*, any other party will have the right to file written argument within 7 days from the date on which the argument of the *amicus curiae* was served on those parties.

(7) An order of court dealing with costs may make provision for the payment of the intervention of the *amicus curiae*.

50. Partnerships, firms and unincorporated associations

(1) A partnership, firm or unincorporated association may be a party to any proceedings in its own name and proceedings may be initiated against it by any other party.

(2) A party in proceedings against a partnership, firm or unincorporated association need not allege the names of the partners, owner, members or office-bearers.

(3)

(a) Any party to proceedings, initiated by or against a partnership, firm or unincorporated association, may notify the other party to provide it within 10 days of the service of the notice with the names and addresses of the partners, owner, members or office-bearers of the partnership, firm or unincorporated association and a copy of its constitution at the date on which the cause of the proceedings arose.

(b) A partnership, firm or unincorporated association that has been served with a notice in terms of paragraph (a) must comply with it within the specified period.

(c) Once the necessary information has been furnished, the partners, owner, or members become parties to the proceedings.

(d) In the event of a dispute about the identity of a partner, owner, member or office-bearer the court may, on application, decide the issue.

(4) If proceedings are instituted against a partnership, firm or unincorporated association and it appears that, since the cause of the proceedings, it has been dissolved, the proceedings continue against the persons alleged to be or stated by the partnership, firm or association to be partners or members.

(5) Execution in respect of a judgment against a partnership, firm or unincorporated association must first be levied against its assets and thereafter against the private assets of any person held to be or estopped from denying being a partner or member, as if judgment had been entered against that person.

51. Representation of parties

(1) A representative who acts on behalf of any party in any proceedings, must deliver a notice to the registrar and all other parties, advising them of the following particulars:

(a) the representative's name;

(b) the postal address and place of employment or business; and

(c) if an email address and telephone number are available, those particulars.

(2) On receipt of a notice delivered in terms of subrule (1), the address furnished will become the address for notices to and for service on that party of all documents in the proceedings, but any notice duly sent or any service duly effected elsewhere before receipt of that notice will, notwithstanding that change, for all purposes be valid, unless the court orders otherwise.

(3)

(a) A representative in any proceedings who ceases to act for a party must deliver a notice of withdrawal to that party and all other parties concerned.

(b) A notice of withdrawal delivered in terms of paragraph (a) must state the names and addresses of the parties that are notified and the last known particulars and contact details of the party concerned.

(c) After receipt of a notice referred to in paragraph (a), the address of the party formerly represented becomes the address for notices to and for service on that party of all documents in the proceedings, unless a new address is furnished for that purpose.

52. Joinder of parties, intervention as a party, amendment of citation and substitution of parties

(1) At any time before judgment is delivered, the court may join any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in proceedings, if the right to relief depends on the determination of substantially the same question of law or facts.

(2)

(a) The court may, of its own motion or on application and on notice to every other party, make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.

(b) When making an order in terms of paragraph (a), the court may give such directions as to the further procedure in the proceedings as it deems fit and may make an order as to costs.

(3) Any person entitled to join as a party in any proceedings may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party and the court may make an order, including any order as to costs, or give such directions as to the further procedure in the proceedings as it deems fit.

(4) If a party to any proceedings has been incorrectly or defectively cited, the court may, on application and on notice to the party concerned, correct the error or defect and may make an order as to costs.

(5) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to such proceedings may, on application and on notice to every other party, apply to the court for an order substituting that party for an existing party and the court may make such order, including an order as to costs, or give such directions as to the further procedure in the proceedings as it deems fit.

(6) An application to join any person as a party to the proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.

(7) No joinder or substitution in terms of this rule will affect any prior steps taken in the proceedings.

53. Offer of settlement

(1) If a sum of money or the performance of some act is claimed in any proceedings, any party against whom the claim is made may at any time make an offer, in writing, to settle the claim or to perform the act.

(2) Notice of any offer in terms of this rule must be signed by the party who makes it and delivered to all other parties to the proceedings. The notice must state:

(a) whether it is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer is made;

(c) whether the offer is made by way of settlement of both claim and costs or of the claim only; or

(d) whether the other party disclaims liability for the payment of costs or part of the costs, in which case the reasons must be given.

(3) An applicant may accept any offer made in terms of subrule (1) by delivering a notice of acceptance of the offer. The notice must be delivered within 10 days after the receipt of the offer, or thereafter with the written consent of the other party or in terms of an order of court.

(4) In the event of a failure to pay or to perform within 5 days after delivery of the notice of acceptance of the offer, the party entitled to payment or performance may, on 5 days' written notice to the party who has failed to pay or perform, apply for judgment in accordance with the offer, and for the costs of the application.

(5) An offer made in terms of this rule is not a secret offer or tender and may be disclosed to the court at any time.

(6) An offer may be taken into account by the court in making an order for costs.

54. Settlement agreements and draft orders

(1) If the parties to a trial have entered into a settlement agreement prior to the trial date, the registrar must be informed as soon as the settlement agreement is concluded.

(2) A judge will only make such settlement agreement an order of court if:

(a) the representatives of all the parties are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement to be made an order of court; or

(b) proof is provided to the satisfaction of the presiding judge as to the identity of the person who signed the settlement agreement and that the parties want the settlement agreement to be made an order of court.

55. Consolidation of proceedings

(1) The court may make an order consolidating any separate proceedings pending before it if it deems the order to be expedient and just.

(2) The court may make an order referred to in subrule (1) of its own motion or on application by any interested party.

56. Costs

(1) The fees of one advocate and one attorney may be allowed between party and party, unless the court on application authorises the fees of additional advocates and attorneys.

(2) The fees of any additional advocate authorised in terms of subrule (1) must not exceed one half of those of the first advocate, unless the court directs otherwise.

(3) The costs between party and party allowed in terms of a judgment or order of the court, or any agreement between the parties, must be calculated and taxed by the taxing master at the tariff determined by the order or agreement, but if no tariff has been determined, the tariff applicable in the High Court will apply.

(4) Qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the court during the proceedings.

57. Irregular proceedings

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

(2) An application in terms of subrule (1) must be brought on notice to all parties specifying particulars of the irregularity or impropriety alleged and may be made only if:

(a) the applicant has not itself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded to the other party an opportunity of removing the cause of complaint within 10 days;

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) above.

(3) If at the hearing of the application the court is of the opinion that the proceeding constitutes an irregular or improper step, it may set it aside in whole or in part, either as against all the parties or against some of them, and grant leave to amend within a specified period or make any order it deems appropriate.

(4) Until a party has complied with any order of court made against that party in terms of this rule, the party may not take any further step in the cause, save to apply for an extension of time within which to comply with the order.

58. Contempt of court

(1) An application for contempt of court must be launched on an *ex parte* basis in motion court, where the applicant must seek an order that the respondent be ordered to appear at the court to show cause why it should not be held to be in contempt.

(2) An application which seeks for the court to make a finding that a party is in contempt of an order of the court must be made *ex parte* by way of a notice of motion accompanied by a founding affidavit. The notice of motion must seek an order in the following terms:

(a) that the respondent, [chief executive officer / head of department / owner / proprietor / municipal manager of the respondent] (full names) appear in the Labour Court on (date) of (month) (year) at 10h00 to show cause why he/she should not be found guilty of contempt of court for failing to comply with the order of this court dated (date) that the respondent may explain its conduct by way of affidavit filed prior to the date of hearing, although this will not excuse him/her from being present in court;

(b) that in the absence of providing an explanation to the satisfaction of the court, or failing to appear in court despite being properly served, the respondent(s) be found guilty of contempt; and

(c) that the respondent(s) be incarcerated for such period as the court deems appropriate; or for the respondent(s) to be fined in an amount the court deems appropriate; or other alternative relief;

(d) that service of the application and order be effected personally upon the respondent [chief executive officer / head of department / owner/ proprietor / municipal manager of the respondent] and on the state attorney, if the matter concerns an organ of state.

(3) The affidavit in support of the application must clearly set out how service of the relevant court order was effected upon the respondent; who accepted the service on behalf of the respondent; the responsible person (whom the applicant seeks the court to find to be in contempt) of the respondent who was aware of the court order and is deliberately refusing to comply therewith; in what respect the respondent has failed to comply with the order and other allegations that will constitute the grounds for obtaining the order sought.

(4) If a defence is raised by the respondent, the court may either hear the matter on the date on which the respondent was ordered to appear in court, or postpone the matter.

59. Taxation

(1) The registrar may perform the functions and duties of a taxing master or appoint any person as taxing master who is in the registrar's opinion fit to perform the functions and duties as are assigned to or imposed on a taxing master by these rules, on such terms and for such period as may be determined.

(2) The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the court.

(3) At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.

(4) The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.

(5) Despite subrule (4), notice need not be given to a party:

(a) who failed to appear at the hearing either in person or through a representative; or

(b) who consented in writing to the taxation taking place in that party's absence.

(6) Any decision by a taxing master is subject to the review of the court on application.

60. Reviews of taxation in chambers

(1) Reviews must be noted by filing a notice to review.

(2) The notice to review must be filed within 15 days of the decision that is the subject of the review.

(3) A copy of the notice to review must be served on all interested parties.

(4) The notice to review must set out:

(a) the particulars of the decision that is the subject of the review;

(b) the specific part or part of the item which the ruling of the taxing master is sought to be reviewed;

(c) the objections to the specific item made at taxation by the dissatisfied party;

(d) the factual grounds of review; and

(e) the legal grounds of review.

(5) On receipt of a notice to review, the taxing master must as soon as possible:

(a) draw up a stated case of the facts;

(b) give reasons for the decision;

(c) provide all interested parties with copies of the stated case and reasons; and

(d) send copies of the stated case to all parties within 20 days of receipt of the rule 60 notice.

(6) On receipt of a copy of the taxing master's stated case and reasons, the applicant must within 15 days deliver concise written representations in respect of the review.

(7) Any party on whom a notice to review has been served may, within 5 days of delivery of the applicant's representations in terms of subrule (6), deliver concise written representations in respect of the review.

(8) The taxing master must deliver a report to each of the parties within 20 days of receipt of the representations referred to in subrule (7).

(9) The parties may make further written submissions to the taxing master within 10 days of receipt of the taxing master’s report. The taxing master must then place the case, together with the report and any submissions made, before a judge in chambers.

61. Service and enforcement of court orders

In terms of section 163 of the Act, service and execution of the court's decisions, judgments or orders must take place in accordance with the procedure for service and execution of decisions, judgments or orders of the High Court of South Africa.

62. Oath of office of interpreter

(1) Before any interpreter may interpret in court, the interpreter must take an oath or make an affirmation in the following form before a judge of the court:

> "I, ... (full names)
> do hereby swear/truly affirm that whenever I may be called on to perform the functions of an interpreter in any proceedings in the court, I will truly and correctly and to the best of my ability interpret from the language I am called on to interpret into one or other of the official languages and vice versa."

(2) The oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation and must be signed by the interpreter.

63. Witness fees

(1) A witness in any proceedings in the court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and Constitutional Development and published by notice in the Gazette in terms of section 37 of the Superior Courts Act, 2013 (Act 10 of 2013).

(2) Despite subrule (1), the court may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

64. Sworn translators

Any person admitted and enrolled as a sworn translator of any division of the court of South Africa is deemed to be a sworn translator for the court.

65. Subpoenas

(1) Any party who requires a witness to attend any proceedings to give evidence may have a subpoena issued by the registrar for that purpose.

(2) A subpoena must comply with Form 3.

(3) If a witness is required to produce in evidence any document or thing in the witness's possession, the subpoena must specify the document or thing to be produced.

(4) After the subpoena has been issued, it must be served by the sheriff in any manner authorised by rule 9.

(5) A witness who has been required to produce any document or thing at the proceedings must hand it over to the registrar as soon as possible after service of the subpoena, unless the witness claims that the document or thing is privileged.

(6) After the witness has handed over any document or thing to the registrar, it may be inspected by any party to the proceedings.

(7) Once the inspection in terms of subrule (6) is complete, the registrar must return the document or thing to the witness.

APPEALS

66. Appeals to the Labour Court[3]

[3] This rule applies in instances where parties have a right of appeal to the Labour Court. For example: Appeals in terms of section 58 of the Mine Health and Safety Act, 1996 (Act 29 of 1996) and section 10 of the Employment Equity Act, 1998 (Act 55 of 1998).

(1) Appeals must be noted by filing a notice of appeal with the registrar.

(2) Unless the enabling statute provides otherwise, the notice of appeal must be filed within 10 days of the date on which the person filing the notice of appeal is notified of the decision that is the subject of the appeal.

(3) A copy of the notice of appeal must be served on all interested parties.

(4) The notice of appeal must set out:

(a) the particulars of the decision that is the subject of the appeal;

(b) the findings of fact that are appealed against; and

(c) the conclusions of law that are appealed against.

(5) The notice of appeal must, in addition, contain a notice calling upon the responsible person or body whose decision is under appeal, to provide a written record of the proceedings, and reasons for the decision, within 15 days of the delivery of the notice of appeal.

(6) The person or body upon whom the notice of appeal is served must timeously comply with the direction in the notice of appeal.

(7) If the person or body fails to comply with the direction, the registrar must make available to the appellant the record which is received on such terms as the registrar deems appropriate to ensure its safety.

(8) The appellant must make copies of such portions of the record as may be necessary for the purposes of the appeal and certify each copy as true and correct.

(9) The appellant must furnish the registrar and each of the other parties with a copy of the record or portion of the record, as the case may be, and a copy of the reasons filed by the person or body.

(10) The costs of the transcription of the record, copying and delivery of the recording reasons, if any, must be paid by the appellant and then become costs in the cause.

(11) The appellant must deliver concise written representations in respect of the appeal within 10 days of receipt of the written record and reasons.

(12) The respondent in an appeal may deliver concise written representations in respect of the appeal within 10 days of delivery of the appellant's written representations filed in terms of subrule (11).

(13) When the registrar receives representations delivered in terms of subrule (12) or the time limit for delivering these representations lapses, whichever occurs first, the registrar must allocate a date for the hearing of the appeal.

67. Leave to appeal to the Labour Appeal Court

(1) An application for leave to appeal from the Labour Court to the Labour Appeal Court may be made, by way of a statement of the grounds for leave, at the time of the judgment or order.

(2) If an application for leave to appeal has not been made at the time of judgment or order, an application for leave must be filed with the registrar responsible for appeals and the grounds for appeal furnished within 15 days of the date of the judgment or order against which leave to appeal is sought, except that the court may, on good cause shown, extend that period.

(3) If the reasons or the full reasons for the court's order are given on a date later than the date of the judgment or order, the application for leave to appeal must be made within 10 days after the date on which the reasons are given, except that the court may, on good cause shown, extend that period.

(4) A copy of any application for leave to appeal must also be served on the secretary to the judge from whom leave to appeal is sought. If the judge's secretary is not available, it may be served on the secretary of any other judge in the seat where the matter was heard.

(5) Within 10 days of the filing of the application for leave to appeal, the party seeking leave may file submissions in support of the application, and any party opposing the application for leave to appeal may file its opposing submissions within 5 days thereafter.

(6) An application for leave to appeal will be decided by the judge in chambers on the basis of the submissions filed by the parties, unless the judge directs that the application be heard in open court.

GENERAL PROVISIONS

68. Ex tempore judgments

(1) When ex tempore judgments are handed down, any party wanting to arrange for the transcript of the judgment must make the necessary arrangements with the transcribers, at their own cost.

(2) Awaiting the transcript does not delay any time period prescribed by the Act or these rules from continuing to run. The time periods run from the day the judgment was delivered.

69. Destruction of documents and archiving

(1) In any matter that has not been adjudicated upon by the court or a judge, and has not been withdrawn, the registrar may, subject to the National Archives and Record Service of South Africa Act, 1962 (Act 43 of 1996), after the lapse of 3 years from the date of filing of the last document, authorise the destruction of the documents filed.

(2) Subject to rule 7, the registrar must archive a file in the following circumstances:

(a) in the case of any motion proceeding, when a period of 6 months has elapsed without any steps taken by the applicant from the date of the filing of the application, or the date of the last process filed;

(b) in the case of referrals for adjudication, when a period of 6 months has elapsed from the date of delivery of the statement of claim without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed;

(c) When a party fails to comply with a direction issued by a judge within the stipulated time limit.

(3) The applicant or plaintiff, as the case may be, may file an application, on affidavit and on notice to all parties, to seek the retrieval of the file and the reinstatement of the proceedings.

70. Pro bono exemption

In matters where one or both of the parties are represented by practitioners acting pro bono, a judge may grant an exemption from the full or partial application of the relevant portions of these rules, including issuing directives regarding inter alia the preparation of the record, indexing and pagination of the papers and the conduct of pre-trial conferences, as well as the need to file heads of argument.

71. Procedures not specifically provided for in these rules

If a situation for which these rules do not provide arises in proceedings or contemplated proceedings, the court may adopt any procedure that it deems appropriate in the circumstances, and may act in any manner it deems expedient to achieve the objects of the Act, and in doing so may have regard to any appropriate rule in the Uniform Rules.

72. Virtual hearings

(1) The default position is that proceedings be conducted in open court. However, the presiding judge in any matter has the discretion to hear any matter virtually, either on request of one or more of the parties, or by direction.

(2) The judge shall give instructions as to the establishment of video links, the recording of the proceedings, the retention of an audio file by the registrar, and the means of access to the virtual hearing by persons who do not have access to IT-related equipment and software.

(3) It remains the decision of the presiding judge to grant access to any virtual hearing with due regard to the nature of the proceedings, public interest in the proceedings and the principles of open justice.

73. Media access to proceedings

(1) Representatives of the media shall be entitled to take still photographs and/or video footage during court proceedings in the following circumstances, unless the court otherwise directs:

(a) court activities for 15 minutes before the commencement of proceedings each day;

(b) during any adjournment of proceedings or at the end of proceedings;

(c) any argument presented to the court where no evidence is led including but not limited to opening and closing argument and sentencing; and

(d) judgment and/or any other judicial rulings.

(2) Should a representative of the media wish to photograph, film or record any judicial proceedings, he/she shall lodge an application in court, subject to prior written notice to the clerk of court/assistant registrar and where possible to the parties to the matter. Such notice should be given at least 24 hours before the commencement of any proceedings. The presiding judge may condone an applicant's failure to adhere to the 24-hour notice period.

(3) In granting the application the court may consider the following:

(a) For the purposes of filming the proceedings, representatives of the media may install a limited number of cameras, fixed on tripods. Anyone wishing to film the proceedings may also install the necessary microphones and shall do so in the least obtrusive way.

(b) The media may also install their own audio equipment provided that this is not obstructive and does not interfere with the proceedings. Where possible, such equipment shall be installed alongside or joined to the court equipment used for recording proceedings.

(c) A limited number of photographers may be allowed to photograph the proceedings by using still cameras fixed on tripods. Paragraphs (a) and (b) do not limit the amount of handheld or cell phone cameras used to record or photograph proceedings subject to what is set out in the order.

(d) Anyone filming or taking photographs of the proceedings shall ensure that:

(i) the location of cameras is not changed while the court is in session; and

(ii) lenses and/or film are not changed while the court is in session.

(e) In respect of both video and still cameras, no lighting of any sort, whether fixed or otherwise, is permitted for the purpose of photographing or filming the proceedings.

(f) Each camera may only be operated by one operator.

(g) Arrangements regarding the installation and positioning of equipment to be installed must be agreed with the court manager or his/her delegate prior to the commencement of proceedings:

(i) All equipment must be placed in a fixed and unobstructive position at least fifteen minutes before the start of the proceedings.

(ii) To the extent that any installed equipment (i.e. equipment that is not handheld) needs to be used outside of the courtroom or the court building, the placement of such installed equipment shall be agreed with the court manager or his/her delegate.

(iii) All equipment must be removed at the end of each day's proceedings or during any adjournment.

(iv) To the extent that cabling is required, such cabling must not interfere with free movement inside the court.

(v) Should any problems arise in relation to the photographing or video and/or audio recording of the proceedings, these may only be attended to during adjournments.

(4) The conduct of all media representatives must be consistent with the decorum and dignity of the court. This includes the need for all media representatives to be appropriately dressed.

(5) Equipment must be positioned and operated to minimise any distraction while court is in session.

(6) Recording of any bench discussions is prohibited.

(7) Recording or close-up photography of matters of a private, confidential or privileged nature which may ensue between legal representatives and or parties is prohibited.

(8) Close-up recordings or photographs of judicial officers, legal practitioners or litigants in court are prohibited.

(9) The use of recordings and photographs for commercial or political advertising purposes is prohibited.

74. Limitation of liability

The State or the registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that registrar to such party in proceedings before the court or in the enforcement of an order in terms of these rules in the form of legal advice or in the compilation or preparation of any process or document.

COMMENCEMENT OF RULES AND REPEAL

(1) These rules will come into operation on the day announced in the Government Gazette.

[Date of commencement: 17 July 2024. GN 5038, G. 50929 of 12 July 2024.]

(2) These rules repeal all of the existing rules for the Labour Court and the Practice Manual that came into effect on 1 April 2013.

Form 1
STATEMENT OF CLAIM

Form 2
APPLICATION FOR DEFAULT JUDGMENT

Form 3
SUBPOENA