

LABOUR COURT RULES

RULES FOR THE CONDUCT OF PROCEEDINGS IN THE LABOUR COURT

Act

as promulgated by

GN 1665 in GG 17495 of 14 October 1996
[with effect from 11 November 1996]

as amended by

GN R961 in GG 18142 of 11 July 1997
[with effect from 11 July 1997]
GN 1100 in GG 19196 of 4 September 1998
[with effect from 4 September 1998]
GN R766 in GG 22587 of 17 August 2001
[with effect from 20 August 2001]

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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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 or public holiday, 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;

[Definition of 'day' amended by GN 1100 of 4 September 1998.]

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

'firm' means a business carried on by a sole owner or body corporate under a separate name;

'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;

'rules' means these rules and includes any footnote to a rule; and

'serve' means to serve in accordance with rule 4(1), and 'service' has a corresponding meaning.

2 Office hours and address of registrar

(1) The office of the registrar is at-

Sixth and Seventh Floors
Arbour Square Building
corner of Juta and Melle Streets
BRAAMFONTEIN
2001.

(2) Branch offices of the registrar are at-

First Floor
Twinell House
112 Long Street
CAPE TOWN
8001.

Fourth Floor
ICL House
480 Smith Street
DURBAN
4001.

First Floor
Auto and General Towers
190 Govan Mbeki Avenue
PORT ELIZABETH
6001.

[Subrule (2) amended by GN 1100 of 4 September 1998.]

(3) The office and branch offices of the registrar will be open every Monday to Friday, excluding public holidays, from 08:00 to 13:00 and from 14:00 to 15:30.

(4) Despite subrule (3), either the court or the registrar may direct that any document be filed on any day and at any time.

3 Issue of documents and registrar's duties

(1) Any party initiating any proceedings must apply for a case number before serving any documents. The application for a case number must be made to the registrar in the registrar's office or by fax. If the application is made by fax, Form 1 must be used.

(2) The registrar must assign consecutive case numbers to all documents that initiate proceedings. Proceedings initiated at any of the branch offices must be assigned the consecutive case numbers of that office.

(3) The registrar must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.

(4) The registrar can refuse to accept a document from any party if the document is not properly marked with the case number assigned by the registrar.

(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 a direction.

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

4 Service of documents

(1) A document that is required to be served on any person may be served in any one of the following ways, namely-

- (a) (i) by handing a copy of the document to the person;
- (ii) by leaving a copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;
- (iii) by leaving a copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority;
- (iv) by faxing a copy of the document to the person, if the person has a fax number;
- (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 fax number for service, by leaving a copy of the document at that address or by faxing it to that fax number;
- (vii) by sending a copy of the document by registered post to the last-known address of the party concerned, and, unless the contrary is proved, it will be presumed that service was effected on the seventh day following the day on which the document was posted.

[Sub-para. (vii) added by GN R961 of 11 July 1997.]

- (b) (i) if the person 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 person 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, at that office of the union or employers' organisation 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 person 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, by 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 person is a municipality, by serving a copy of the document on the town clerk, assistant town clerk or any person acting on behalf of that person;
- (v) if the person 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;
- (vi) if the person is the State or a province, by serving a copy on a responsible employee in any office of the State Attorney; or

(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 by the person who effected service;
- (b) if service was effected by fax, by an affidavit of the person who effected service, which must provide proof of the correct fax number and confirmation that the whole of the transmission was completed;
- (c) if the person on whom the document has been served is already on record as a party, by a signed acknowledgement or receipt by the party on whom the document was served; or

[Para. (c) amended by GN 1100 of 4 September 1998.]

- (d) by return of the Sheriff;
- (e) by producing the certificate issued by the post office for the posting of the registered letter and an affidavit that the letter posted contained the document concerned.

[Para. (e) added by GN R961 of 11 July 1997.]

(3) 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 fit.

5 Filing of documents

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

- (a) by handing the document to the registrar;
- (b) by sending a copy of the document by registered post; or
- (c) by faxing the document.

- (2) A document is filed with the registrar-
- (a) on the date on which the document is handed to the registrar;
 - (b) on the date on which the document sent by registered post was received by the registrar; or
 - (c) on completion of the whole of the transmission of the fax.

(3) The original document must be lodged with the registrar. In the case of filing by faxing the document, the original document must be lodged within 5 days of it being faxed.

[Subrule (3) amended by GN 1100 of 4 September 1998.]

6 Referrals ¹

Statement of claim

(1) A document initiating proceedings, known as a 'statement of claim', may follow the form set out in Form 2 and must-

- (a) have a heading containing 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 party delivering the document at which that party will accept notices and service of all documents in the proceedings; and
 - (iv) a notice advising the other party that if that party intends opposing the matter, a response must be delivered in terms of subrule (3) within 10 days of service of the statement of claim, failing which the matter may be set down for default judgment and an order for costs may be granted against that party;

[Sub-para. (iv) substituted by GN R961 of 11 July 1997 and amended by GN 1100 of 4 September 1998.]

- (b) have a substantive part containing the following information:
 - (i) The names, description and addresses of the parties;
 - (ii) a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document;
 - (iii) a clear and concise statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable any opposing party to reply to the document; and
 - (iv) the relief sought;
- (c) be signed by the party to the proceedings;
- (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

[Para. (e) amended by GN 1100 of 4 September 1998.]

- (f) be delivered.

[Para. (f) inserted by GN 1100 of 4 September 1998.]

(2) In the case of referral by the director of the Commission in terms of section 191 (6) of the Act-

(a) the party who applied for the referral by the director 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

[Para. (a) amended by GN 1100 of 4 September 1998.]

(b) the statement of claim must include a copy of the application for the referral.

Response

(3) (a) Any party on whom a statement of claim is served may deliver a response to that statement.

(b) The response must, with the changes required by the context, contain the same information required by subrule (1).

(c) A response must be delivered within 10 days of the date on which the statement of claim is delivered.

[Para. (c) amended by GN 1100 of 4 September 1998.]

Pre-trial conference by parties

(4) (a) When a response is delivered, the parties to the proceedings must hold a pre-trial conference in terms of paragraph (b) within 10 days of the date of delivery of the response.

[Para. (a) substituted by GN R961 of 11 July 1997 and amended by GN 1100 of 4 September 1998.]

(b) 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 time required for the hearing; and
- (xvii) whether an interpreter is required and if so for which languages.

[Para. (b) substituted by GN 1100 of 4 September 1998.]

(c) If the matter has not been settled, the parties must draw up and sign a minute dealing with the matters set out in paragraph (b) .

(d) The party initiating the proceedings must ensure that a copy of the minute is delivered within 5 days of the conclusion of the pre-trial conference.

[Para. (d) amended by GN 1100 of 4 September 1998.]

Judge's directions

(5) When the minute of a pre-trial conference is delivered or the time limit for its delivery lapses, whichever occurs first, the registrar must send the file to a judge of the court for directions in terms of this subrule. The judge who receives the file from the registrar may-

- (a) direct the registrar to enrol the matter for hearing if the judge is satisfied that the matter is ripe for hearing; or
- (b) direct that an informal conference be held before a judge in chambers to deal with any pre-trial matters; or
- (c) direct the parties to convene a further formal pre-trial conference at a date, time and place fixed by the registrar, at which a judge must preside, to deal with any pre-trial matters.

Judge's powers on pre-trial matters

(6) A judge may, at a pre-trial conference held in terms of subrule (5) (b) or (5) (c) , make any appropriate order for the further conduct of proceedings, including an order as to costs.

Non-compliance with subrules (4), (5) and (6)

(7) If any party fails to attend any pre-trial conference convened in terms of subrule (4) (a) , (5) (b) or (5) (c) , or fails to comply with any direction made by a judge in terms of subrules (5) and (6), the matter may be enrolled for hearing on the direction of a judge and the defaulting party will not be permitted to appear at the hearing unless the court on good cause shown orders otherwise.

Enrolment for hearing

(8) (a) When a judge decides that any directions given in terms of this rule have been satisfied, the judge must direct the registrar to enrol the matter for a hearing.

(b) When the registrar receives a direction in terms of paragraph (a) , the registrar must enrol the matter and notify the parties of the time, date and place that has been allocated for the hearing.

Discovery of documents

(9) (a) A document or tape recording not disclosed may not, except with the leave of the court 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 tape recording may be used by a person other than the person who was obliged to disclose it.

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

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

Expert witnesses

(10) (a) 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 15 days before the date of hearing.

[Para. (a) substituted by GN 1100 of 4 September 1998.]

(b) If a party fails to comply with paragraph (a) the court may decline to admit the evidence, or admit it only on good cause shown, and may make an order as to costs.

7 Applications ²

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

(2) The notice of application must substantially comply with Form 4 and 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) an 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

[Para. (e) amended by GN 1100 of 4 September 1998.]

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

[Subrule (2) substituted by GN R961 of 11 July 1997.]

(3) 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.

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

(b) 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.

[Para. (b) amended by GN 1100 of 4 September 1998.]

(c) A notice of opposition and an answering affidavit must respectively contain, with the changes required by the context, the same information required by subrules (2) and (3).

(5) (a) 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.

[Para. (a) amended by GN 1100 of 4 September 1998.]

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

(6) (a) The registrar must allocate a date for the hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.

(b) The registrar must notify the parties of the date, time and place for the hearing of the application but need not notify a respondent who has not delivered an answering affidavit in support of its opposition of the application.

[Para. (b) added by GN 1100 of 1998 and substituted by GN R766 of 17 August 2001.]

(6A) An application to make a settlement agreement or arbitration award an order of court which is unopposed must be enrolled by the registrar on notice to the applicant. The court may make any competent order in the absence of the parties.

[Subrule (6A) inserted by GN 1100 of 4 September 1998 and substituted by GN R766 of 17 August 2001.]

(7)

[Subrule (7) deleted by GN 1100 of 4 September 1998.]

(7) The court must deal with an application in any manner it deems fit, which may include-

- (a) an order to hold a pre-trial conference;
- (b) referring a dispute for the hearing of oral evidence; and
- (c) an order as to costs.

[Subrule (8) renumbered as (7) by GN 1100 of 4 September 1998.]

(9)

[Subrule (9) deleted by GN 1100 of 4 September 1998.]

[Rule 7 amended by GN R961 of 11 July 1997.]

7A **Reviews** ³

(1) A party desiring to review a decision or proceedings of a body or person performing a reviewable function justiciable by the court must deliver a notice of motion to the person or body and to all other affected parties.

(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, within 10 days after receipt of the notice of motion, to the registrar, the record of the proceedings sought to be corrected or set aside, together with such reasons as are required by law or desirable to provide, and to notify the applicant that this has been done; and
- (c) be supported by an affidavit setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside.

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

(4) If the person or body fails to comply with the direction or fails 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.

(5) The registrar must make available to the applicant the record which is received on such terms as the registrar thinks appropriate to ensure its safety. The applicant must make copies of such portions of the record as may be necessary for the purposes of the review and certify each copy as true and correct.

(6) 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.

(7) 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.

(8) The applicant must within 10 days after the registrar has made the record available either-

- (a) by delivery of a notice and accompanying 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.

(9) Any person wishing to oppose the granting of the order prayed in the notice of motion must, within 10 days after receipt of the 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.

(10) The applicant may file a replying affidavit within 5 days after receipt of an

answering affidavit.

[Rule 7A inserted by GN 1100 of 4 September 1998.]

8 Urgent relief

(1) A party that applies for urgent relief must file an application that complies with the requirements of rules 7(1), 7(2), 7(3) and, if applicable, 7(7).

(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 party must provide reasons why a shorter period of notice should be permitted.

(3) The party bringing the application must sign the application.

(4) The registrar must fix a date, time and place for the hearing of the application.

(5) 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) 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) Any party who intends opposing the application or making any representations concerning the application must notify the registrar and the party bringing the application, as soon as possible after the application has come to that party's notice.

(8) Any party who has notified the registrar in terms of subrule (7) may appear before the court and be heard at the hearing, except that at any stage of the proceedings, on good cause shown, the court may allow any person who is cited as a party but who failed to notify the registrar as required by subrule (7), to appear to be heard on whatever terms the court may decide.

(9) The court must deal with an urgent application in any manner it deems fit, and may make an order as to costs.

(10) 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.

[Subrule (10) added by GN R961 of 11 July 1997.]

9 Appeals to the Labour Court ⁴

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

(2) Unless an Act otherwise provides, 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.

[Subrule (2) amended by GN 1100 of 4 September 1998.]

(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 the reasons for the decision, within 15 days of the delivery of the notice of appeal.

[Subrule (5) amended by GN 1100 of 4 September 1998.]

(5A) (a) The person or body upon whom a notice of appeal in terms of subrule (3) is served must timeously comply with the direction in the notice of appeal.

(b) If the person or body fails to comply with the direction or fails 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.

(c) The registrar must make available to the appellant the record which is received on such terms as the registrar thinks appropriate to ensure its safety. The appellant must make copies of such portions of the record as may be necessary for the purposes of the review and certify each copy as true and correct.

(d) 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.

(e) 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.

[Subrule (5A) inserted by GN 1100 of 4 September 1998.]

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

(7) The respondent in an appeal may deliver concise written representations in respect of the appeal within 10 days of delivery of appellant's written representations in terms of subrule (6).

[Subrules (6) and (7) amended by GN 1100 of 4 September 1998.]

(8) When the registrar receives representations delivered in terms of subrule (7) or the time limit for delivering these representations lapses, whichever occurs first, the registrar must allocate a date for the hearing of the appeal.

10 **Reviews in chambers** ⁵

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

(2) The notice to review must be filed within 10 days of the decision that is the subject of the review.

[Subrule (2) amended by GN 1100 of 4 September 1998.]

(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 factual grounds of review; and
 - (c) the legal grounds of review.
- (5) On receipt of a notice to review the registrar must as soon as possible-
- (a) draw up a stated case of the facts;
 - (b) give reasons for the decision; and
 - (c) provide all interested parties with copies of the stated case and reasons.

(6) On receipt of a copy of the registrar's stated case and reasons, the applicant must within seven 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.

[Subrule (7) amended by GN 1100 of 4 September 1998.]

(8) When the registrar receives representations delivered in terms of subrule (7) or the time limit for delivery of representations lapses, whichever occurs first, the review must be placed before a judge in chambers for decision.

11 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 that are not specifically provided for in the rules; and
 - (c) any other applications for directions that may be sought from the court.

[Para. (c) amended by GN 1100 of 4 September 1998.]

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

(3) 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.

(4) 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.

12 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.

[Subrule (2) amended by GN 1100 of 4 September 1998.]

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

13 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.

[Subrule (1) renumbered as (1) (a) by GN 1100 of 4 September 1998.]

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

[Para. (b) inserted by GN 1100 of 4 September 1998.]

(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 the hearing, the party initiating the proceedings must notify the registrar as soon as possible.

14 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 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.

15 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.

(3) The judge before whom the affidavit or affirmation is placed may order that an application for re-enrolment be made. In that event, the application must comply with rule 11.

16 Default judgments

(1) If no response has been delivered within the prescribed time period or any extended period granted by the court within which to deliver a response, the registrar must, on notice to the applicant(s), enrol a matter for judgment by default.

(a) and (b)

[Paras. (a) and (b) deleted by GN 1100 of 4 September 1998.]

[Subrule (1) substituted by GN R961 of 11 July 1997 and by GN R766 of 17 August 2001.]

(2) Subrule (1) does not apply if the party initiating the proceedings instructs the registrar not to enrol the matter for judgment by default.

[Subrule (2) amended by GN 1100 of 4 September 1998.]

(3) If a matter has been enrolled for default judgment, the person initiating the proceedings may request the registrar to have the matter removed from the roll if the matter has been settled or an extension of time has been granted.

(4) If the registrar receives a request in terms of subrule (3), the registrar must remove the matter from the roll.

16A

(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 under-

- (a) subrule 1 (a) must apply for it on notice to all parties whose interests may be affected by the relief sought.
- (b) subrule 1 (b) may within 15 days after acquiring knowledge of an order or judgment granted in the absence of that party apply on notice to all interested parties to set aside the order or judgment and the court may, upon good cause shown, set aside the order or judgment on such terms as it deems fit.

[Rule 16A inserted by GN 1100 of 4 September 1998.]

17 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.

18 Heads of argument

(1) 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) The heads of argument must-

- (a) include a chronology of the material facts;
- (b) in its first reference to a factual allegation 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 first reference to a text book specify the author, title, edition and page number (in that order for example: Smith, Labour Law, 2nd ed, 44); and
- (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 (for example: *National Union of Hotel Workers Smith (Pty) Ltd* 1990 1 SA 127 (A) 130 (D); *Jones v Clark (Pty) Ltd a.o.* (1990) 15 ILJ 1010 (LAC) 1031D).

[Rule 18 substituted by GN 1100 of 4 September 1998.]

19 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.

[Subrule (3) amended by GN 1100 of 4 September 1998.]

(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* (r), 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 seven 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*.

20 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 of 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, members become parties to the proceedings.

(d) In the event of a dispute about the identity of a partner, owner, member or officebearer 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, after excussion, 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.

[Rule 20 substituted by GN 1100 of 4 September 1998.]

21 Representation of parties

(1) A representative who acts on behalf of any party in any proceedings, must notify 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 a fax number and telephone number are available, those numbers.

(2) Any party who terminates a representative's authority to act and then acts in person or appoints another representative, must give notice to the registrar and all other parties concerned of that termination, and of the appointment of any other representative, and include the representative's particulars, as referred to in subrule (1).

(3) On receipt of a notice in terms of subrule (1) or (2), the address of the representative or the party, as the case may be, 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.

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

(b) A notice delivered in terms of paragraph (a) must state the names and addresses

of the parties that are notified.

(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.

22 Joinder of parties, intervention as applicant or respondent, amendment of citation and substitution of parties

(1) 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.

22A 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 (2) 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) If an offer accepted in terms of this rule is not stated to be in satisfaction of an applicant's claim and costs, the party to whom the offer is made may apply to the court, on 5 days' written notice to the other party, for an order for costs.

[Subrules (3), (4) and (5) amended by GN 1100 of 4 September 1998.]

(6) 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.

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

[Rule 22A inserted by GN R961 of 11 July 1997.]

22B **Pagination**

(1) In all opposed proceedings, including applications for urgent relief, the documents that are filed with the registrar must be paginated by the party initiating the proceedings.

(2) The party initiating the proceedings must compile and deliver an index before the matter is heard.

(3) The parties must ensure that their copies of the documents filed with the registrar are paginated in accordance with the index.

[Rule 22B inserted by GN R961 of 11 July 1997.]

23 **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.

24 **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.

[Subrule (3) amended by GN R961 of 11 July 1997.]

(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.

25 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.

26 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.

[Rule 26 amended by GN R961 of 11 July 1997.]

27 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.

28 Labour Court as court of record

(1) A record must be kept of-

- (a) any judgment or ruling 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) (a) A transcript 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.

(b) 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.

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

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

29 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 published by notice in the *Gazette* in terms of section 42 of the Supreme Court Act, 1959 (Act 59 of 1959).

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

30 Application for leave to appeal to the Labour Appeal Court ⁶

(1) An application for leave to appeal 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 leave to appeal has not been made at the time of judgment or order, an application for leave must be made 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.

[Subrule (2) amended by GN R961 of 11 July 1997 and by GN 1100 of 4 September 1998.]

(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.

[Subrule (3) amended by GN 1100 of 4 September 1998.]

(3A) Unless the judge from whom leave to appeal is sought otherwise directs, the parties' respective submissions in respect of the application for leave to appeal must be-

- (a) in writing; and
- (b) delivered on or before a date fixed by the judge.

[Subrule (3A) inserted by GN 1100 of 4 September 1998.]

(4) to (7) inclusive

[Subrules (4) to (7) inclusive deleted by GN R961 of 11 July 1997.]

[Rule 30 amended by GN R961 of 11 July 1997.]

31 Sworn translators

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

[Rule 31 amended by GN R961 of 11 July 1997.]

32 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 4.

(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.

33 Commencement of rules

These rules will come into operation on the day that the whole of the Act comes into operation.