



PRACTICE NOTE 2/2016

DEALING WITH APPLICATIONS FOR REPRESENTATION AT CCMA PROCEEDINGS BY PERSONS OTHER THAN THOSE CONTEMPLATED IN RULE 25 OF THE CCMA RULES

1. Purpose

- 1.1. The purpose of this Practice Note is to assist Commissioners to deal with applications for representation at CCMA proceedings by persons other than those contemplated in Rule 25 of the CCMA Rules.

2. Background

- 2.1. On 20 September 2016, the Johannesburg Labour Court issued an order declaring that: *“on a proper interpretation of Rule 25, read with Rule 35, of the CCMA Rules and the provisions of the Labour Relations Act 66 of 1995, a Commissioner has a discretion to authorise any party to CCMA proceedings to be represented by any other person, on good cause shown.”*
- 2.2. This order confirms that Commissioners have the discretion under the CCMA Rules to allow representation at CCMA proceedings by persons other than those listed in Rule 25.
- 2.3. This discretion is reflected in the amended Rule 35 of the CCMA Rules.
- 2.4. During the last review of the Rules, Rule 35(1) was amended to provide that the Commission or a commissioner may condone any failure to comply with any provision of the Rules, on good cause shown.
- 2.5. A new sub-rule 35(2) was also added, which states that a commissioner may act in any manner that is expedient to achieve the objectives of the LRA and in doing so prefer substance rather than form, unless the LRA provides otherwise.
- 2.6. The amended Rule 35(1), read with sub-rule (2), expanded the discretion of commissioners to depart from the Rules where necessary to achieve the objectives of the LRA and is wide enough

to condone non-compliance with the provisions of Rule 25, which includes allowing persons other than those contemplated in the Rule 25, on good cause shown, and in the spirit of the LRA, to represent a party at CCMA proceedings.

3. Procedure to be Followed

An application to allow a person other than those contemplated in Rule 25 to represent a party at CCMA proceedings must be dealt with in accordance with the provisions of Rule 31, unless the commissioner directs otherwise as provided for in sub-rule (10).

4. Dealing with the Merits of the Application

In determining the merits of the application i.e. whether good cause has been shown, it is recommended that the Commissioner considers the following factors:

- 4.1 Whether it is unreasonable to expect the applicant party to deal with the dispute without representation, after considering –
 - 4.1.1 the nature of the questions of law and facts raised by the dispute;
 - 4.1.2 the complexity of the dispute;
 - 4.1.3 the public interest, if applicable;
 - 4.1.4 the ability of the applicant party to deal with the dispute; and
 - 4.1.5 any other relevant factors.
- 4.2 The reason why a person contemplated in Rule 25 cannot represent the applicant party, which includes affordability, if applicable.
- 4.3 The ability of the proposed representative to represent the applicant.
- 4.4 Whether the proposed representative is subject to the oversight and discipline of a professional or statutory body.
- 4.5 Whether the proposed representative will contribute to the fairness of the proceedings and the expeditious resolution of the dispute.
- 4.6 Prejudice to the other party.
- 4.7 Any other relevant factors.

5. Without derogating from the guidelines provided above, Commissioners should give consideration to applications for representation by community advice offices registered under the Non-Profit Organisations Act 71 of 1997, in assessing these applications Commissioners are advised to be alive to the following factors:-
 - 5.1. Employees do not have an automatic right to representation by community advice offices. Good cause must be shown, taking into account the relevant factors listed above.
 - 5.2. Representation by a community advice office will often be appropriate in complex matters, where employees would benefit from representation by lawyers or trade union representatives, but are unable to access their services.
 - 5.3. Proof that the relevant community advice office is duly registered under the Non-Profit Organisations Act 71 of 1997 must be produced.

6. Ruling and Perusal

- 6.1. The Ruling must be in writing with brief reasons and should be submitted within 10 days of the date of the hearing of the application.
 - 6.2. Until further notice, all rulings must be submitted to MayroonishaD@CCMA.org.za for perusal by the Senior Commissioner: Arbitrations and Post-hearing before they are served on the parties.
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