PRACTICE MANUAL OF THE LABOUR COURT OF SOUTH AFRICA

This directive comes into effect from 2 April 2013.

INDEX

CONTENTS

40. Archiving files
41. Pro bono exemption
42. Pro- Forma documents

1. INTRODUCTION

1.1 This practice manual is modelled on similar manuals that apply in various Divisions of the High Court. The manual aims to promote access to justice by all those whom the Labour Court serves. It is also intended to promote consistency in practice and procedure, and to set guidelines on the standards of conduct expected of those who practise in the Labour Court.

1.2 The practice manual is not a substitute for the Rules of the Labour Court. It is concerned mainly with how the Rules of Court are applied in the daily functioning of the court. The manual tells representatives and litigants how things are done in this court, and what is expected of them. By their nature, the provisions of the manual call for flexibility in their application where this is required to promote their purpose.

1.3 The manual addresses the need to maintain respect for the court as an institution, and to promote efficiency in the adjudication of disputes. It is hoped that the practice manual will also improve the quality of the court's service to the public, and promote the statutory imperative of expeditious dispute resolution.

2. APPLICATION OF THE PRACTICE MANUAL

2.1 This manual sets out the practice to be observed in the Labour Court of South Africa.

2.2 The manual seeks to obtain uniformity amongst judges in respect of practice rulings. It must be emphasised that no judge is bound by practice directives; this manual is not intended to limit judicial discretion. It should be noted though that the judges of the Labour Court strive for uniformity in the functioning of the courts and their practice-related rulings. The practice manual thus sets out what can be anticipated, in the normal course of events, on any issue covered by it.

2.3 This manual supersedes all previous practice directives issued by the Judge President.

2.4 Reference in this manual to the Rules, is a reference to the Rules of Labour Court in Government Notice 1665 14 October 1996, as amended.

2.5 The practice manual will come into force on a date to be determined by the Judge President.

3. DEFINITIONS

'Day' means a 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.

'Representative' means the person appearing in court on behalf of a party, and includes a legal practitioner as defined in the Labour Relations Act, 66 of 1995, and any other person who has the right to appear in the Labour Court by virtue of the provisions of s 161 of the Act.

4. COMPLIANCE WITH THIS PRACTICE MANUAL

A failure to comply with the directives contained in this manual will be viewed in a serious light and will be addressed by an appropriate sanction which may include an order for costs de bonis propriis against the representative who failed to comply.

5. COURT TERMS AND RECESSES

5.1 The court calendar year is divided into four court terms. The duration of each court term will be determined, in advance, by the Judge President.

5.2 Only urgent applications will be heard during recess, except that by directive of the Judge President or the Deputy Judge President, other matters may be allocated during recess to acting judges appointed for the purpose.

6. DRESS CODE

6.1 Representatives who appear before the court are required to be properly dressed. If not properly dressed they run the risk of not being “seen” by the presiding judge.

6.2 Proper dress for attorneys comprises:

- A black stuff attorney’s gown
- A white shirt or blouse closed at the neck.
- A white lace jabot.
- Dark pants or skirt.
- Black or dark closed shoes.

6.3 Proper dress for junior counsel comprises:

- A black stuff gown.
- A plain black long sleeved jacket which has both a collar and lapels. The jacket must have, for closing, one or two buttons at the waist. The buttons must be black.
- A white shirt or blouse closed at the neck.
- A white lace jabot or white bands.
- Dark pants or skirt.
- Black or dark closed shoes.

6.4 Proper dress for senior counsel comprises:

- A silk gown.
- A silk waist coat.
- A white shirt or blouse closed at the neck.
- A white lace jabot or white bands.
- Dark pants or skirt.
- Black or dark closed shoes.

6.5 Representatives who are not attorneys or advocates and who enjoy right of appearance in terms of s 161 (b) to (e) of the Labour Relations Act must be dressed appropriately. Men should wear a jacket, preferably with a tie.

7. MODE OF ADDRESS AND INTRODUCTION

7.1 A judge must be addressed and referred to in the same manner in which a High Court judge is addressed as either “My Lord” or “My Lady”. It is not necessary for representatives 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 fifteen minutes prior to the hearing to introduce themselves. Otherwise, representatives 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, e.g. the fact of a settlement, a request that a matter be stood down, etc.

7.2 In all proceedings, representatives must complete an attendance form recording their names and telephone numbers. The form must be handed to the presiding judge’s secretary in court before the matter is called.

8. COURT SITTINGS

8.1 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.

8.2 Representatives must be punctilious in their attendance in court at the above times.

9. FORMAT OF LEGAL PROCESS

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

10. REFERRALS IN TERMS OF RULE 6 AND TRIAL PROCEDURES (RULE 6)

10.1 Default judgments

10.1.1 Default judgments will ordinarily be dealt with by a judge in chambers.

10.1.2 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 6(3) (c), and in accordance with Form I, which must be delivered to the registrar.

10.1.3 The application must be accompanied by an affidavit deposed to by the applicant in which the applicant:

• confirms the correctness of the facts averred in the statement of case and the relief sought;
• confirms that service of the statement of case has been effected in terms of the provisions of this manual and provides proper proof of such service;
• records the applicant’s remuneration at the time that the claim arose and any details of employment subsequent to that date; and
• deposes to any other facts that the applicant considers relevant.

10.1.4 The registrar must place the application for default judgment before a judge in chambers.

10.1.5 If the judge is satisfied that the requirements for default judgment have been met, the judge will grant judgment by default in favour of the applicant.

10.1.6 If the judge is not satisfied that the above requirements for default judgment have been met, the judge may issue a directive as to any further requirements that the applicant must meet, and may require the applicant 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 applicant's claim.

10.2 Case management

10.2.1 When a statement of claim is filed in terms of Rule 6 and the issue in dispute concerns the dismissal of 10 or more employees whose reinstatement is sought, the referring party must simultaneously with the filing of the statement of case, deliver a letter to the registrar marked for the attention of the Judge President, setting out:

• the names of the parties to the trial and the case number;
• the nature of the dispute; and
• an estimate of the probable duration of the trial.

10.2.2 The Judge President may appoint a judge to undertake the case management of the file, and to ensure an expeditious hearing.

10.2.3 If a judge is appointed to manage a case:

• the parties will be notified accordingly;
• all interlocutory applications relating to the matter, will, as far as possible, be heard by the appointed judge, on a date to be determined by the judge in consultation with the Judge President and the parties;
• any party to the matter, on notice to all other parties to the trial, may apply to the judge for directions as to the conduct of the case. The judge may furnish such directions or direct that an interlocutory application be brought.

10.2.4 The appointed judge may direct that one or more pre-trial conference/s be held before the judge, or between the parties in the judge's absence.

10.2.5 Matters that have been designated for case management will be set down for trial on an expedited basis by the judge appointed to manage the file, in consultation with the Judge President.

10.3 Interlocutory applications: points in limine, exceptions and special pleas that do not require the hearing of oral evidence.

10.3.1 Except for those matters that are the subject of case management (where the judge concerned will issue directions on how interlocutory matters are to be dealt with), all preliminary points raised in a statement of claim and any response to a statement of claim (including but not limited to applications for condonation of the late referral of a statement of

claim or the late filing of any statement of response, special pleas and exceptions) will be set down for hearing on an interlocutory basis.

10.3.2 Once the preliminary point is ripe for determination, any of the parties may index and paginate the court file and request that the matter be enrolled for hearing without delay. Filing of heads of argument is not a prerequisite for making this request, though the registrar may, if directed to do so by a judge, call upon the parties to file their heads of argument before allocating the matter for hearing.

10.3.3 Despite the provisions of this paragraph, any interlocutory application that is not opposed or in which any order by consent is sought may be dealt with by a judge in chambers.

10.4 Pre-trial conferences and set downs

10.4.1 Except for matters that are designated for case management, a pre-trial conference must be held and a minute filed within the time limit prescribed by Rule 6(4) (a).

10.4.2 In such pre-trial minute, and in addition to dealing with all the issues prescribed by Rule 6(4)(b) the parties shall be required to specifically deal with and address the following in the minute, which must be recorded in the minute:

10.4.2.1 Where the issue in dispute is that of an alleged unfair dismissal for operational requirements, the following questions must be answered:

(a) The applicant(s) must indicate whether the applicant(s) admit(s) that in general there was a need to retrench;
(b) If the applicant(s) does/do not admit that there was in general a need to retrench, the applicant(s) must state the factual basis for the failure to admit this. The respondent must give a response thereto;
(c) If the applicant(s) contend there were alternatives to his/her/their retrenchment, the applicant(s) must state what these alternatives were and the respondent must give a response thereto;
(d) If the fairness or otherwise of the selection criteria is in dispute, the applicant(s) must state the applicant(s)' basis for contending that such selection criteria was unfair. The respondent must give a response thereto;
(e) If the applicant(s) contends that someone else should have been selected for retrenchment in his/her/their place, he/she/they should give the respondent the name of such a person and why such person should have been selected, and the respondent must give a response thereto;
(f) The applicant(s) must set out in sufficient particularity in what respect the applicant(s) allege(s) that the termination of his/her/their services was procedurally unfair and the Respondent must set out its response thereto;
(g) Where meetings took place between the parties the parties must each set out when these meetings took place, whether these meetings constituted consultations in the retrenchment process and whether minutes exist for these meetings. If minutes exist, the parties must record the status of such minutes. If the applicant(s)' case is that the meetings as identified did not constitute consultation(s), he/she/they must indicate the basis of such allegation and the respondent must respond thereto.

10.4.2.2 Where the issue in dispute is that of an alleged unfair dismissal for participation in unprotected strike action, the following questions must be answered:

(a) The applicant(s) must indicate whether the applicant(s) admit(s) that the applicant(s) participated in strike action, i.e. whether there was a strike;
(b) If the applicant(s) does/do admit that there was a strike, the applicant(s) must indicate whether such strike action was protected or unprotected;
(c) If the applicant(s) contend(s) that strike did not occur or if the applicant(s) admit that strike did occur such strike was protected, the applicant(s) must state the factual basis for any such contention. The respondent must give a response thereto;
(d) Should there have been ultimatums issued by the respondent, the respondent must set out when and at what time such ultimatums were issued, how such ultimatums were conveyed to employee parties / unions, and whether such ultimatums were in any way adhered to. The applicant(s) must give a response to this;
(e) Does/do the applicant(s) allege any provocation on the part of the respondent, and if so, the applicant(s) must set out the factual basis for so contending. The respondent must give an answer thereto;
(f) If the applicant(s) dispute(s) that the sanction of dismissal was inappropriate, the applicant(s) is/are required to set out the factual basis for so contending. The respondent must give an answer thereto;
(g) The applicant(s) must set out in sufficient particularity in what respect the applicant(s) allege(s) that the termination of his/her/their services was procedurally unfair and the Respondent must set out its response thereto.

10.4.2.3 Where the issue in dispute is that of an alleged automatic unfair dismissal, the following questions must be answered:

(a) The applicant(s) is/are required to set out on what basis he/she/they contend the dismissal to be automatically unfair;
(b) If the applicant(s) contend that the dismissal is based on discrimination, the applicant(s) must set out the factual basis for so contending and the respondent must provide an answer thereto;
(c) If the respondent concedes that there is discrimination, but contends that such discrimination is fair, the respondent must set out the factual basis for so contending and the applicant(s) must provide an answer thereto.

10.4.3 If a pre-trial minute is not filed within the prescribed time limit, or the pre-trial minute does not comply with the requirements of Rule 6(4)(b) or the provisions of clause 10.4.2 above, as the case may be, the registrar must set the matter down in the motion court for a formal pre-trial conference to be held before a judge.

10.4. 4 A judge may issue an order in respect of filing of a pre-trial minute. A failure to comply with such an order may result in the file being archived to be retrieved only on application, in which the applicant will be required to show good cause why the failure to comply with the order or directive of the judge should be condoned.

10.4.5 Once a pre-trial minute is filed, the court file is sent for directions to a judge in chambers. A judge may direct that a further and/or better minute be filed or that the matter may be set down for trial. The registrar must allocate a trial date as soon as possible (except for case managed matters) and notify the parties.

10.5 Pagination, indexing, binding and general preparation of papers in trials

10.5.1 Not less than five days prior to the date allocated for the hearing of the trial, the referring party must do the following:

• 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;
• 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;
• collate, number consecutively and suitably bind the pre-trial minute and all documents relating thereto; and
• 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.
• File a practice note as provided in paragraph 10.7 below.

10.5.2 In binding the pleadings and notices, care must be taken to ensure that the method of binding does not hinder the turning of pages.

10.5.3 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.

10.5.4 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.

10.5.5 If a document or documents attached to the pleadings or contained in the bundles as referred to above is not readily legible, the referring party must ensure that legible typed copies of the document or documents are provided.

10.5.6 Should the referring party not have complied with these provisions this shall not be a basis for any other party seeking postponement of the matter, and 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 depriving the referring party of any costs in the matter or any order of costs de bonis propriis.

10.6 Bundles of documents prepared for trial

10.6.1 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.

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

10.6.3 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.

10.6.4 The parties must agree prior to the commencement of the trial upon the evidential status of the documents contained in the bundle. This agreement must be contained in the pre-trial minute.

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

10.6.6 If unnecessary documents are included in the bundle, the court may on the application of any party to the trial or mero motu make a punitive cost order.

10.7 Practice note for trials

10.7.1 The representative of the referring party must send a practice note by facsimile transmission or email in respect of the trial enrolled for hearing, marked for the attention of the Judge President (email address Labourcourts@justice.gov.za; fax no 011 403 2825).

10.7.2 The practice note must be filed not later than 12h00 at least five court days before the date on which the trial is enrolled for hearing.

10.7.3 The practice note must set out:

• the names of the parties to the trial and the case number ;
• the date of the hearing;
• the name of each party's representative, and their cell phone and landline numbers;
• the relief sought at the trial by the party on whose behalf the representative completing the practice note appears;
• the nature of the dispute;
• an estimate of the probable duration of the trial;
• the prospect of any settlement;
• 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
• 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.

10.7.4 If the above information is not provided timeously, the referring party runs the risk of the matter not being allocated a judge or the matter being postponed with an order for costs de bonis propriis against the representative of the referring party.

10.7.5 Once a matter 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, the appointed judge.

10.8 Roll call

10.8.1 In Johannesburg, a roll call will be held at 9h45 on each day during the court term of all trials enrolled for hearing on that day.

10.8.2 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.

10.9 Continuous roll

10.9.1 The Labour Court runs a continuous roll, and, notwithstanding the number of days for which the matter is enrolled as indicated in the notice of set-down, a trial will ordinarily continue in one sitting until the conclusion of all the evidence. Representatives must ensure that they are available for the entire duration of the trial.

10.9.2 A postponement of a trial will not be granted because a representative is not available for the trial or for the entire duration of the trial.

10.10 Part-heard matters

10.10.1 No trial should be commenced where any issue or consideration exists to the knowledge of any party's representative that would interfere with the completion of the trial.

10.10.2 A judge hearing a trial will not, unless it becomes necessary, postpone a trial which will result in a part-heard trial.

10.10.3 If a trial is part-heard, unless otherwise arranged with the presiding judge in consultation with the Judge President, a date for the continuation of the trial must be applied for by delivering a letter to the registrar marked for the attention of the Judge President. This letter must set out:

• the names of the parties to the action and the case number;
• the name of the judge before whom the trial became part-heard;
• the date when the trial became part-heard;
• an estimate of the probable duration for the completion of the trial; and
• whether a copy of the record of the part-heard portion of the trial is necessary and available.

10.10.4 If the letter addressed to the Judge President is not a joint letter from all the parties to the trial, proof that a copy of the letter has been forwarded to the other party or parties to the trial, must be provided.

10.10.5 The Registrar must inform the parties in writing of the date allocated for the completion of the trial.

10.11 Settlement agreements and draft orders

10.11.1 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.

10.11.2 A judge will only make such settlement agreement an order of court if:

• 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 made an order of court, or
• 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 made an order of court.

10.11.3 If the parties to a trial have settled the dispute on the terms set out in a draft order, a judge will only make such draft order an order of court if:

• the representatives of all parties are present in court and confirm that the draft order correctly reflects the terms agreed upon, or
• proof is provided to the satisfaction of the presiding judge that the draft order correctly reflects the terms agreed upon.

11. MOTION PROCEEDINGS (RULE 7 AND 7A)

11.1 Case management

11.1.1 In any application brought in terms of s 189A(13) of the Labour Relations Act, the applicant must simultaneously with the filing of the application deliver a letter to the registrar marked for the attention of the Judge President setting out :

• The names of the parties and the case number;
• A summary of the facts; and
• The relief sought.

11.1.2 The Judge President may appoint a judge to undertake the case management of the files, and to ensure an expeditious hearing.

11.1.3 If a judge is appointed to manage the application:

• The parties will be notified accordingly;
• The appointed judge will issue directions on hearing of the application.

11.2 Applications to review and to set aside arbitration awards and rulings

11.2.1 Once the registrar has notified an applicant in terms of Rule 7A (5) that a record has been received and may be uplifted, the applicant must collect the record within seven days.

11.2.2 For the purposes of Rule 7A (6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received.

11.2.3 If the applicant fails to file a 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. 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 7. 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.

11.2.4 If the record of the proceedings under review has been lost, or if the recording of the proceedings is of such poor quality to the extent that the tapes are inaudible, the applicant may approach the Judge President for a direction on the further conduct of the review

application. The Judge President will allocate the file to a judge for a direction, which may include the remission 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.

11.2.5 Applications under sections 145 and 158(1) (g) of the Labour Relations Act should not ordinarily be brought in respect of proceedings that are incomplete.

11.2.6 Parties are reminded that Rule 7A (5) requires an applicant in a review application to copy and deliver only those portions of a record that are necessary for the purposes of the review. The filing of unnecessary portions of a record is a factor that may be taken into account for the purposes of any order of costs.

11.2.7 A review application is by its nature an urgent application. An applicant in a review application is therefore required to ensure that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.

11.2.8 A review application must be indexed and paginated once all the pleadings and the record of the proceedings have been filed. The application must be divided into three sections, the first section containing the pleadings and affidavits, the second section the relevant notices (including all Rule 7A notices) and the third section the record of the proceedings. The principles applicable to the indexing and pagination of application proceedings as determined in this practice manual shall equally apply to each section.

11.3 Winding up of a Trade Union or Employers' Organisation

11.3.1 An application for the winding up of a trade union or employers' organisation must be in accordance with Form 2.

11.3.2 Notwithstanding opposition to an application for the winding up of a trade union or employers' organisation, a final order will not be made without a rule nisi first being issued setting out the terms on which a final order will be made.

11.3.3 A rule nisi must be made on the following terms:

(i) that the respondent be placed under provisional liquidation and in the hands of the Master of the [Western Cape] High Court;
(ii) that a rule nisi is issued, calling upon all interested parties to appear and show cause, if any, to this Honourable Court on [Monday 14 June 2012] at 10 am or so soon as the matter may be heard why a final order of liquidation should not be granted, and why the costs of this application should not be costs in the liquidation;
(iii) that [Mr Peter Shabalala of XYZ Trustees], failing him a liquidator appointed by the Master of the High Court, be appointed to wind up the respondent's estate on such terms and conditions as the Master deems appropriate;
(iv) that the Registrar of the Labour Court alternatively the Master of the High Court

determine the liquidator's fees for winding up the respondent.
(v) Service of this order should be effected:

(a) by the Sheriff on the respondent at its registered office; being [1st floor Trade Union Building, Uniondale].
(b) by the Sheriff placing a copy of this order on the notice board or a prominent place within the respondent's premises which is accessible to all its staff and members visiting it.
(c) by prepaid registered post to all businesses [who are members, (where the respondent is an employers' organisation), or where the respondent has members (where the respondent is a trade union)].
(vi) this order be published in the Times newspaper[optional].

11.3.4 On the return date, before the court will grant the final order, proof of compliance with the rule nisi must be provided. Where there has not been full or proper compliance, the Court may, because of the new return date, order that service should be affected again.

11.4 Filing of answering and replying affidavits

11.4.1If 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 request of the applicant, enrol the application on the opposed motion roll and serve a notice of set down to all parties.

11.4.2 Where the respondent or the applicant has filed its opposing or replying affidavits outside the time period set out in the rules, there is no need to apply for condonation for the late filling of such affidavits unless the party upon whom the affidavits are served files and serves a Notice of Objection to the late filing of the affidavits. 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.

11.5 Index, binding of papers and pagination

11.5.1 Neither the indexing nor pagination of the file or the filing of heads of argument is a pre-condition to any application being set down for hearing, but prior to the hearing of any application (including unopposed applications if the application consists of an excess of 50 pages), the applicant must deliver a complete index of all documentation before the court for the determination of the application.

11.5.2 The index should briefly describe each affidavit and annexure as a separate item.

11.5.3 Prior to the hearing of any application, the applicant must ensure that all the documentation before the court is properly bound.

11.5.4 In binding the documents, care must be taken to preclude that the method of binding hinders the turning of pages.

11.5.5 The documentation should not be bound in volumes of more than 120 pages, unless the papers are collated and presented in a lever arch file.

11.5.6 The applicant must paginate the notice of motion, founding affidavit and annexures thereto prior to serving the documents on the other party. After receiving the answering affidavit, the applicant must paginate same together with the reply that it has file prior to serving its reply.

11.5.7 Additional documents generated during the proceedings (e.g. returns of service, reports, etc.) must be indexed, registered and placed in an "Additional Documents Bundle."

11.5.8 Notwithstanding the above, the applicant must ensure that prior to the hearing of the application, the file is properly paginated.

11.5.9 Should the applicant not have complied with these provisions this shall not be a basis for any other party seeking postponement of the matter, and the presiding judge, on the day on which the matter is heard, may make any order the judge deems appropriate as to the conduct of the matter, which may include any order as to costs, including depriving the applicant of any costs in the matter or any order of costs de bonis propriis.

11.6 Heads of Argument

11.6.1 In unopposed motions, at the applicant's request, the registrar will set down an unopposed motion on an unopposed motion roll to be heard by the judge presiding in motion court. The filing of heads of argument is not a precondition for the setting down of a matter, and heads need not be filed unless the judge hearing the application directs that heads should be filed.

11.6.2 In opposed motions, unless otherwise stated in the notice of set-down, the applicant must deliver heads of argument at least 15 days prior to the hearing of an opposed application. The heads of argument must be clear, succinct and without unnecessary elaboration.

11.6.3 Each point should be numbered and be stated as concisely as the nature of the case allows and must be followed by a reference to the record or an authority in support of the point, without any lengthy quotations from the record or authorities.

11.6.4 Unless otherwise stated in the notice of set-down, at least seven days prior to the hearing of an opposed application, the respondent(s) must deliver heads of argument. If the applicant has failed to file heads of argument, the respondent must in any event file its heads within the above time limit. Failure to file heads may not lead to the matter not being heard by the Court.

11.6.5 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.

11.6.6 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 following address: LabourCourts@justice.gov.za. 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.

11.6.7 A judge hearing an opposed application may at any time direct that all or any of the parties file supplementary heads of argument.

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

11.7 Postponements

11.7.1 An application, whether opposed or unopposed, will generally not be postponed, and certainly not for reasons related to the convenience of representatives. When an application is postponed, it will be postponed to the roll of the presiding judge in the same week or at some future date, unless otherwise directed by the Judge President or his Deputy.

11.7.2 Should the presiding judge decide to grant a postponement of the application, the presiding judge may determine whatever terms and conditions will regulate the granting of such postponement, including the determination of the next hearing date and further steps to be taken in prosecution of the application to hearing date.

11.7.3 In the event of an agreed postponement by both parties, this agreement shall be recorded in writing by both parties and shall be filed together with the practice note referred to hereunder. This written agreement to postpone must set out the grounds for such agreement being necessary. An agreement to postpone concluded after the deadline for the filing of the practice note shall not form a basis for postponement in the absence of compelling considerations to the contrary.

11.8 Practice note in motion proceedings

11.8.1 The representative for the referring party must send a practice note by facsimile transmission or email in respect of the application enrolled for hearing, marked for the attention of the Judge President (email address Labourcourts@justice.gov.za; fax no 011 403 2825).

11.8.2 The practice note must be filed not later than 12h00 at least five court days before the date on which the application is enrolled for hearing.

11.8.3 The practice note must set out:-

• the case number
• the names of the parties to the application;
• the date of hearing;
• the name of each party's representative, whom they represent and their cellular and landline numbers;
• the relief sought by the applicant;
• the nature of the application;
• an estimate of the probable duration of the hearing; and
• the prospect of any settlement;
• the terms of the order sought, preferably in electronic format;
• Whether the matter will proceed on the hearing date and if not, the reason for this.

11.8.4 In the absence of a practice note from the applicant, a motion to be heard on the opposed roll will not be dealt with other than for removal from the roll, save in the event of the applicant's representative advancing considerations which are sufficient to persuade the presiding judge to hear the application. In the absence of the applicant, the respondent may file the practice note and may do so at least three days before the hearing of the matter and seek a punitive costs order de bonis propriis against the applicant's attorneys.

11.8.5 A practice note must be deposited as set out above on each occasion the motion appears on the opposed roll.

12 URGENT APPLICATIONS

12.1 In Johannesburg, a duty judge is designated for the hearing of urgent applications for each week of the year. For this purpose, the week commences on Sunday at 18h00 and terminates on the Sunday of the next week at 18h00.

12.2 An applicant wishing to bring an urgent application must do so by contacting the registrar (the after- hours number of the duty Registrar is 082 4620508). Parties must not approach a judge or a judge's secretary directly to arrange for urgent applications to be heard.

12.3 The normal time for the bringing of an urgent application, whether during term or in recess, is 10h00 on Tuesdays and Thursdays. If the urgent application cannot be brought at 10h00 on Tuesday or Thursday of any week, it may be brought on any other day of the week at any time, but the applicant in the founding affidavit must set out facts which justify the bringing of the application at a time other than 10h00 on Tuesdays or Thursdays.

12.4 The above paragraph does not apply to applications to interdict strikes and lock outs that are contended to be unprotected, or to applications to interdict acts of violence or any unlawful conduct that may occur during industrial action. Applicants seeking interdicts in respect of strikes or lock outs that are contended to be unprotected, are reminded of the provisions of s 68(2) and (3) of the Labour Relations Act, which prescribe the periods of notice to be given, and that good cause must be shown of such time limits are not complied with.

12.5 The above requirements are additional to the applicant's obligation to set out explicitly the circumstances which render the matter urgent. In this regard, it is emphasised that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the applicant.

12.6 The above practices will be strictly enforced by the presiding judge. If an application is enrolled on a day or at a time that is not justified, the application will not be enrolled or if enrolled it will be struck from the roll and an appropriate punitive cost order may be made.

12.7 The first paragraph of relief sought in the applicant's notice of motion must be for the enrolment of the application as an urgent application and for the dispensing of the forms and service provided for in the Rules of court, to the extent necessary.

12.8 In matters where opposition is anticipated because of the nature and extent of the application and the possibility that the relief may effect a substantial number of employees or employers or bargaining councils etc or the costs implications attached to the urgent

application is such that the matter has to be heard urgently, then and in that event the parties may approach the Judge President or the Deputy Judge president, through the registrar at the time of launching the application, to allocate a judge to that matter so that proper arrangements are made and the matter is expeditiously heard without it being rolled over.

12.9 Unless the circumstances are such that no notice of the application is given to the respondent, or unless the urgency is so great that it is impossible to comply therewith, the notice of motion must provide a reasonable time, place and method for the respondent to give notice of intention to oppose the application and must further provide a reasonable time within which the respondent may file an answering affidavit. The date and time selected by the applicant for the enrolment of the application must enable the applicant to file a replying affidavit if necessary.

12.10 Deviation from the time periods prescribed by the Rules of court must be strictly commensurate with the urgency of the matter as set out in the founding papers. In cases of extreme urgency, a reasonable time must be afforded to the respondent to give notice of intention to oppose.

12.11 If the facts and circumstances set out in the applicant's affidavits do not constitute sufficient urgency for the application to be brought as an urgent application and/or justify the abrogation or curtailment of the time periods referred to in the Rule 6(5) and/or justify the failure to serve the application as required, the court will decline to grant an order for the enrolment of the application as an urgent application and/or for the dispensing of the forms and services provided for in the rule. Save for a possible adverse cost order against the applicant, the court will make no order on the application or strike the matter off the roll. These requirements will be strictly enforced by the presiding judge.

12.12 When an urgent application is brought out of ordinary court hours, the applicant must present a draft order to the Court which must also be available on a memory stick to ensure that the order of the court can be typed so that it can be signed by the registrar or the presiding judge's secretary. The judge designated for the hearing of urgent applications is not to be contacted directly.

12.13 Urgent applications that are postponed will generally not be postponed for more than a week, for the purpose of allowing the parties to file papers. The application must be postponed to the roll of the urgent court, and not to the motion court. If a rule nisi is issued, the return date will be allocated by the presiding judge after consultation with the registrar, and will be heard on the urgent court roll.

12.14 An applicant that wishes to have an application heard on an expedited but not an urgent basis may approach the Judge President or his deputy, with a properly motivated request in writing, for a direction as to the conduct of the application, time periods that will apply and the allocation of a date for hearing.

13 CONTEMPT OF COURT

13.1 It has been found that applications for contempt of court are so varied and often fail to meet the minimum requirement to obtain the relief sought. This is often discovered months after the application was launched. In order to avoid this and the prejudice which results therefrom an application for contempt of Court must be launched on an ex parte basis

on a Friday in Motion Court, where the applicant must seek an order that the respondent be ordered to appear at the Labour Court to show cause why it should not be held to be in contempt.

13.2 An application which seeks for the court to make a finding that a party is in contempt of an order of the Labour 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/Director General/owner/proprietor of the respondent] (full and proper names) appear in the Labour Court on (date) of (month) 2012 at 10 am 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 xyz;

b. that the respondent may explain its conduct by way of affidavit on the date of hearing or before that date (although this will not excuse him/her from being present in court);

c. 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 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 this order be effected personally upon the respondent [Chief Executive officer/Director General/owner/proprietor of the respondent].

13.3 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 (who 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 allegation that will constitute the grounds for obtaining the order sought.

13.4 Where a defence is raised by the respondent the court may either hear the matter on the date on which respondent was ordered to appear in court or postpone the matter to the convenience of the court.

14 GENERAL PROVISIONS

14.1 Service

14.1.1 Service is proved by filing in the court file the original return of service which establishes the service. In the absence of an acceptable explanation, returns of service will generally not be accepted from the Bar.

14.1.2 Where service is effected at a domicilium citandi et executandi, the original document (or a copy with an affidavit explaining the absence of the original) wherein the domicilium is chosen must be placed in the court file.

14.1.3 In applications for committal or some other penalty for contempt of court, personal service of the application must be effected on the respondent.

14.1.4 When service of any document by registered post is prescribed or authorised (in any action or application), service is proved by the production of an affidavit by the person who procured the despatch of such document, in which that person:

• indicates the date of despatch together with the name and address of the addressee;
• describes the document so despatched;
• indicates, if necessary, that the item in question has not been returned to the sender by the Post Office as being undelivered; and
• annexes the documentary proof of posting of a registered article issued by the Post Office.

14.1.5 When a party serves any document by fax in terms of Rule 4, the deponent to any affidavit filed in terms of Rule 4(2) (b) must, in addition to providing proof of the correct fax number and confirmation that the whole of the transmission was completed, state under oath that the party to whom the fax was addressed telephonically confirmed receipt of the whole of the fax transmission and the name of the person who confirmed receipt of the transmission.

14.2 Settlement

14.2.1 The registrar must be informed telephonically immediately when it becomes known that a matter has become settled. Subsequent to the allocation of a matter to a particular judge for hearing, either the registrar or the secretary of the judge to whom the matter has been allocated, must be immediately informed telephonically that the matter has become settled.

14.2.2 A Judge will only make such settlement agreement an order of court if:

• the representatives of all the parties to the application are present in court and confirm the signature of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court; or
• 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 thereto want the settlement made an order of court.

14.2.3 If the parties to an application have settled the application on the terms set out in a draft order, a judge will only make the draft order an order of court if:

• the representatives of all the parties to the application are present in court and confirm that the draft order correctly reflects the term agreed upon; or
• proof to the satisfaction of the presiding judge is provided that the draft order correctly reflects the terms agreed upon.

14.3 Noting Judgments

14.3.1 Parties will be given a reasonable notice of the handing down of judgments.

14.3.2 Parties are expected to arrange for a representative to attend court to note judgment.

14.3.3 In exceptional circumstances, (e.g. where to avoid delay the presiding judge in a matter heard outside of Johannesburg directs that the judgment will be delivered in Johannesburg) a judgment may be handed down in any seat of the court and in the manner directed by the judge.

14.4 Striking matters from the roll

14.4.1 If there is no appearance when a matter is called it may there and then be struck from the roll.

14.4.2 A matter struck from the roll will only be re-enrolled if a proper explanation for non-appearance is given. The explanation must be on oath.

14.5 Ex tempore judgments

When ex tempore judgments are handed down, it is the responsibility of the parties to arrange for the transcript of the judgment. Awaiting the transcript does not delay the time periods from continuing to run. The time periods run from the day the judgment was handed down.

15. APPLICATIONS FOR LEAVE TO APPEAL

15.1 A copy of any application for leave to appeal filed in terms of Rule 30 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.

15.2 Within 10 days of the filing of the application for leave to appeal, the party seeking leave must file its submissions in terms of Rule 30(3A) and the party opposing the leave must file its submissions five days thereafter. An application for leave to appeal will be decided by the judge in Chambers on the basis of the submissions filed in terms of Rule 30 (3A), unless the judge directs that the application be heard in open court.

15.3 An application for leave to appeal must be filed with the registrar in charge of appeals.

16. ARCHIVING FILES

16.1 In spite of any other provision in this manual, the Registrar will archive a file in the following circumstances:

• in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed;
• in the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case 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; and
• when a party fails to comply with a direction issued by a judge within the stipulated time limit.

16.2 A party to a dispute in which the file has been archived may submit an application, on affidavit, for the retrieval of the file, on notice to all other parties to the dispute. The provisions of Rule 7 will apply to an application brought in terms of this provision.

16.3 Where a file has been placed in archives, it shall have the same consequences as to further conduct by any respondent party as to the matter having been dismissed.

17. 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 this manual, 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.

ends

FORM “A”
APPLICATION FOR DEFAULT JUDGEMENT
IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG / CAPE TOWN / DURBAN / PORT ELIZABETH

Case no.....
In the matter between
…… Applica
nt
and
…… Respon
dent

APPLICATION FO DEFAULT JUDGMENT

[1] The referral having being duly served on the Respondent.
[2] The time for giving notice to oppose the referral having expired on .....……
[3].The respondent has not given notice to oppose the matter.
[4].The applicant hereby applies for judgment by default against the respondent as claimed in the referral.
[5] An affidavit in support of this application is filed herewith marked 'A".
Dated this ……. day of ……. 20…….

_____
Sign

Name and address of …….....…….……
Applicant/Applicants' representative…….....…….
Telephone/fax no./ e-mail address…….....……

Affidavit

_____

I the undersigned (full names)_____do hereby make oath and state:

1. I am the applicant in the matter and the facts contained herein are within my own knowledge and to the best of my belief true and correct.
2. I hereby confirm the correctness of the facts averred in my statement of case and the relief sought and further confirm that service of the statement of case has been properly affected as provided in the rules of this Court upon the respondent.
3. At the time of my dismissal my gross remuneration was the sum of R___ per month. Since my dismissal I have been employed as from _date/s_____. I have earned a total amount of R_____ from the date of my dismissal to the date of signing this affidavit.
4. I seek the relief as prayed for in my statement of case.

_____
Applicant

Signed and sworn before me on this day of 201 the deponent having declared that he knew and understood the contents of the affidavit, that he had no objection to taking the oath, considered the oath binding on his conscience and utter the words "so help me God"

_____

Commissioner of Oaths
(Stamp)

FORM B

Usual Heading

TAKE NOTICE that an application will be made on 10 May 2012 for an order in the following terms:
(i) that the respondent be placed under provisional liquidation and in the hands of the Master of the High Court;
(ii) that a rule nisi is issued, calling upon all interested parties to appear and show cause, if any, to this Honourable Court on at 10 am or so soon as the matter may be heard why a final order of liquidation should not be granted, and why the costs of this application should not be costs in the liquidation;
(iii) that of , failing him a person nominated by the Master of the High Court, be appointed liquidator to wind up the respondents' estate on such terms and conditions as the Master deems appropriate;
(iv) that the Registrar of the Labour Court alternatively the Master of the High Court determine the liquidator's fees for winding up the respondent.
(v) Service of this order should be affected:
(a) by the Sheriff on the respondent at its registered office; being
….;
(b) by the Sheriff placing a copy of this order on the notice board or a prominent place within the respondents premises which is accessible to all its staff and members visiting it;
(c) by prepaid registered post to all businesses [who are members, (where the respondent is an employers' organisation), or where the respondent has members (where the respondent is a trade union)]
(vi) publication in the Times Newspaper.

TAKE NOTICE further that the affidavit of John Jones will be used in support of the application.

To: Registrar Labour Court

To: Registrar

To: Respondent

Supporting affidavit

Affidavit

Other than the allegations necessary to obtain a winding up order the following must be included:

• Mr Peter Shabalala of XYZ Trustees, an experienced practitioner in winding up of liquidated businesses, has agreed to take up the appointment as liquidator to wind up the respondent as can be seen from the letter forwarded by him annexed hereto marked “A”
• That I have provided security to the satisfaction of the Master of the High Court to proceed with the application as can be seen in the document annexed hereto marked “B”

_____
Deponent