South Australian Employment Tribunal Practice Directions

Practice Directions 2015

SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

Practice Directions 2015

The President of the South Australian Employment Tribunal makes the following Practice Directions under rule 9 of the *South Australian Employment Tribunal Rules 2015.*

July 2015
Adelaide, Australia

SOUTH
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EMPLOYMENT
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The President of the South Australian Employment Tribunal makes the following Practice Directions under rule 9 of the *South Australian Employment Tribunal Rules 2015*.

PART 1 PRELIMINARY

[Operative: 1 July 2015]

1. Interpretation

(1) In these Practice Directions:

(a) words used have the same meaning as words used in the SAET Act, Regulations or Rules or, where relevant, a relevant Act or regulations made under a relevant Act;

(b) **the SAET Act** means the *South Australian Employment Tribunal Act 2014*;

(c) **the Regulations** means the *South Australian Employment Tribunal Regulations 2015*;

(d) **the Rules** means the *South Australian Employment Tribunal Rules 2015*;

(e) **the RTW Act** means the *Return to Work Act 2014*;

(f) **the Tribunal** means the South Australian Employment Tribunal.

(2) These Practice Directions are to be read subject to the SAET Act, Regulations and Rules and to any provision of a relevant Act or regulations under a relevant Act.

(3) A reference in these Practice Directions to a "party" shall be taken, where the context permits, to include "parties".

2. Dispensation from these Practice Directions

The Tribunal may, on application or on its own initiative, dispense with compliance by any person with, or vary any requirement of, these Practice Directions, either before or after the time for compliance arises, and in doing so may impose any conditions or give any consequential or other directions as it considers appropriate.

3. The Registry

The Registry shall be situated at Level 6, Riverside Centre, North Terrace, Adelaide and shall be open to the public between 8.30 am and 5.00 pm on all days other than weekends and public holidays.

4. The Seal

(1) The Seal of the Tribunal approved by the President pursuant to Rule 8(3) is in the following form:

(2) The documents to which the Tribunal seal is to be affixed, pursuant to rule 8(2) of the Rules, are as follows:

- Originating documents (i.e. those which commence a matter and have a new file number allocated) (excluding attachments), including amended originating documents;
- Summonses (to “attend” or to “produce”);
- Applications for Directions (excluding attachments);
- Applications for Expansion of Issues in Dispute;
- Assessment and Recommendations (s 43(13) of the SAET Act);
- Referral for Hearing and Determination (s 44 of the SAET Act);
- Final Orders, including costs orders;
- Certificates under s 85 of the SAET Act.

(3) The seal shall be affixed on the first page only of the above documents, other than final orders, which shall have the seal affixed to every page.

(4) The Registrar, having control of the seal, may seal other documents where there is good reason to do so, or it is mandated by another legislative instrument.

PART 2 LODGEMENT OF DOCUMENTS

[Operative: 1 July 2015]

5. Application of this part

This Part applies to documents lodged with the Registry for filing either to initiate proceedings or to take a subsequent step in those proceedings. This Part does not apply to documents provided informally to the Tribunal for conciliation or other purposes unless otherwise ordered by the Tribunal.

6. General requirements for lodging documents

In addition to compliance with Rule 11, a document lodged with the Tribunal must:

(1) be on white A4 size paper or, if the document is being lodged by an attachment to email, have an A4 page layout; and

(2) be typewritten, clearly written or clearly reproduced.

7. Lodging documents by emailed attachment

(4) A document that is required or permitted to be lodged with the Tribunal under the Rules may be lodged by emailing the document to the email address approved by the Registrar for the lodgement of documents by email. The email address for lodgement of documents is saet@sa.gov.au. Documents lodged by emailed attachment but not sent to this address will not be accepted for filing.

Note: There are size limits on documents that can be received by the Tribunal's email systems. Documents attached (ie files) larger than 5MB may not be receivable. Where large documents are involved please contact the Registry.

(5) If a document is lodged by emailed attachment:

(a) the document must be attached to an email in MS Word, RTF, TIF, JPG or PDF format or another format approved by a Registrar and without any security restrictions

(b) the subject line of the covering email must state, in this order:

(i) if the document relates to an existing matter—the file number given to the matter by the Tribunal.

(ii) the title of the approved Form or document

(c) the covering email must provide:

(i) the parties names; and

(ii) an email address to which the Tribunal can send the acknowledgement of lodgement.

(d) A paper copy of a document lodged by emailed attachment is not required by the Tribunal and should not be lodged for filing.

(6) If a document is lodged in accordance with this Direction:

(a) a Registrar must send an acknowledgment of lodgement by return email to the person lodging the document; and

(b) the document is not taken to have been lodged until the acknowledgment of lodgement has been sent; and

(c) once the acknowledgment of lodgement has been sent, the document is taken to have been lodged at the time it was received electronically by the Tribunal.

8. Lodging an application using the Tribunal's internet electronic lodgement facilities

(1) An Application commencing a matter may be lodged via the internet using the electronic lodgement facility at the Tribunal's website, in accordance with the instructions provided by the Tribunal for the use of those facilities.

Note: The lodgement of the Application form commencing matters at the Tribunal by this internet method is the preferred method of lodgement. After 3 months of the commencement of the availability of this facility, lawyers representing applicants should anticipate that the Tribunal will apply Rule 12(2) and the Registrar will refuse to receive case initiating Applications in any other form from legal practitioners.

(2) A Registrar will send an acknowledgment of lodgement by email to the person lodging the Application.

(3) The Application is not taken to have been lodged until the acknowledgment of lodgement mentioned in paragraph (2) has been sent.

(4) Once the acknowledgment of lodgement mentioned in paragraph (2) has been sent, the Application is taken to have been lodged at the time it was received electronically by the Tribunal.

9. Lodging documents by fax

(1) A document that is required or permitted to be lodged with the Tribunal under the Rules may be lodged by fax sent to the fax number approved by the Registrar for the lodgement of documents by fax.

Note 1: The fax number approved for lodgement of documents by fax is available at www.saet.sa.gov.au.

Fax transmissions to the Tribunal are automatically converted to email; the faxed document becomes an attachment to the email. This conversion facility will not be retained indefinitely.

Note 2: There are size limits on documents that can be received by the Tribunal's email systems. Documents attached (ie files) larger than 50 pages may not be receivable. Where large documents are involved please contact the Registry.

(2) A document sent to the Tribunal by fax must be preceded by a cover sheet clearly stating:

(a) the name, address, telephone number and fax number of the natural person sending the fax;

(b) the number of pages transmitted;

(c) if the document relates to an existing matter:

(i) the number given to the matter by the Tribunal; and

(ii) the title of the approved Form or document sent; and

(iii) the parties' names.

(3) A paper copy of a document lodged by fax is not required by the Tribunal and should not be lodged for filing.

10. Signatures

If a document is required by these Rules to be signed by a person, the requirement may be satisfied:

(1) by affixing the person's signature to the document by electronic means by, or at the direction of, the person required to sign the document; or

(2) if the document is an approved form that is lodged with the Tribunal by email or using the Tribunal's electronic lodgement facility—by typing the name of the person completing the form in the box beside the word "Signature".

PART 3 SECTION 28 STATEMENTS AND RELEVANT DOCUMENTS

[Operative: 1 July 2015]

11. Form and order of material to be provided

(1) The material that the decision-maker provides to the Tribunal under section 28(2) of the SAET Act must be presented in one or more physical volumes (or electronic volumes if so directed by the registrar under Rule 12) with documents being set out in each of the headings below (if relevant) and being numbered within each heading in chronological order from the earliest to the latest date.

(2) The material included must comprise only that which is relevant to the decision under review and, to the extent possible and appropriate, must be presented in the order of the following headings: Claim Documents; Tribunal Documents comprising at least the reviewable decision, the application for review, and reconsideration (if available); Medical Reports/Documents; Medical Certificates; Earlier Determinations; Other documents or correspondence.

PART 4 PRE-HEARING PROCEDURES

[Operative: 1 July 2015]

12. Adjournment of directions hearings or conferences

It is in the interests of all parties to Tribunal proceedings that matters are heard and resolved, either by agreement or by determination, as quickly as possible. Where a matter has been given a time and place for directions, a compulsory or pre-hearing conference, or any other preliminary hearing, the Tribunal will expect that the parties and their representatives will be ready to proceed at the appointed time. Any application to adjourn must be soundly based and made in accordance with this Direction and, with respect to a compulsory conference, in accordance with Rule 72. Applications for an adjournment (including applications by consent) made without sufficient and demonstrated reasons to justify an adjournment will not be granted.

(1) An application for adjournment must be made as soon as a party decides to seek an adjournment and has sought the views of the other parties.

(2) Any such application:

(a) must be lodged for filing with the Registry in an approved form and be served on other parties as soon as possible;

(b) must provide the reasons the adjournment is sought and attach a copy of any supporting documents;

(c) must include a statement by the applicant for the adjournment as to when the other parties were served with the application, and whether any response to the application has been received from the other parties, and if so, the nature of that response, including whether there was written consent (including by email) to the proposed application.

(d) evidence of the responses of other parties must not be attached to the application, but the applicant for the adjournment must undertake to the Tribunal that any written responses referred to under sub-paragraph (c) above have been retained on their file and are available for production if required.

(3) At the time the application is lodged the applicant must notify the Tribunal member who has conduct of the matter that an adjournment application has been lodged.

(4) If the application for an adjournment is lodged with the Tribunal and notification given to the member with conduct of the matter not less than three clear days before the date of the directions hearing or conference, the Tribunal member will endeavour to determine the application and notify the parties of the outcome by no later than the following working day.

(5) An application for adjournment made less than three clear working days before the date of the directions hearing or conference, whether with the consent of the other party or not, will be referred to the directions hearing or conference for determination, unless the Tribunal determines otherwise.

(6) Unless parties are served with a copy of an order by a member of the Tribunal granting the adjournment sought, the parties must assume that the directions hearing or

conference will proceed on the day and at the time fixed, and must attend ready to proceed. Parties must not assume that any application to adjourn, even with consent, will be granted.

(7) The Tribunal has a discretion to grant an adjournment other than in accordance with this Direction, where procedural fairness in the instant case requires it.

(8) In determining an application for an adjournment of proceedings in the Return to Work stream, the Tribunal may consider, on its own initiative or on the application of a party, whether it is appropriate to make a costs order in relation to a professional representative under s 107 of the RTW Act.

13. Offers made at or after conciliation

(1) If a party wishes to make a formal record of an offer made to another party to resolve a dispute, that party may file and serve an "Offer to Settle" in accordance with an approved form.

(2) The filed copy of the offer will be placed in a sealed envelope and kept on the Tribunal file.

(3) The sealed envelope may be opened to allow the Presidential member presiding at the pre-hearing conference to consider the offer for the purposes of making an assessment. In that event the Presidential member must ensure that the envelope is subsequently resealed and make a dated and signed note on the envelope to that effect. The content of the offer is not to be disclosed to the Presidential member who hears and determines the matter nor admitted in proceedings before the Tribunal except after a final determination is made and then only for the purpose of considering an application for an order under section 106(7) of the RTW Act.

14. Transition from compulsory conference to pre-hearing conference

(1) If the compulsory conference does not result in an agreed settlement of the matter, the parties and their representatives must, before the conclusion of the compulsory conference, confer with the conciliation officer in order to further clarify and narrow the issues in dispute, and assist the conciliation officer to identify appropriate orders or notations to be made with a view to ensuring that:

(a) the parties are ready to proceed with the pre-hearing conference on the appointed day; and

(b) the Presidential member who presides at the pre-hearing conference is provided with sufficient information about the matter to be able to decide whether an assessment can be made as required by section 45 of the SAET Act or whether further steps should be taken to explore possible settlement of the matter.

(2) Appropriate orders and notations made by a conciliation officer in this context may include any one or more of the following:

(a) that a statement of issues be served by each party by a specified date;

(b) that a statement of proposed evidence of the applicant or any other potential witness be served on each other party by a specified date;

(c) that each party serve on the other party a summary of their respective cases;

(d) that each party serve on the other party a record of the witnesses and documentary evidence upon which each party proposes to rely at the hearing.

(e) that further expert reports (if any) upon which a party proposes to rely[1] be sought within the time allowed by Rule 32 of the Rules and served on the other party by a certain date.[2]

(f) that a consolidated Book of Documents including only that material now relevant in light of any narrowing of the issues (and including any of the further material to be produced under sub-paragraphs (a) to (e) above) be served before the pre-hearing conference.

(3) Any consolidated Book of Documents must be filed and served within five working days of the latest date for compliance with any orders made by the conciliation officer under paragraph (2) above.

(4) The pre-hearing conference will be fixed by the Chambers of the Presidential member to whom the matter is referred at an appropriate time having regard to the time for compliance with any orders made by the conciliation officer and any notations made under paragraph (2) above, and the time limited for filing and serving the consolidated Book of Documents.

15. Pre-hearing conferences

(1) Unless otherwise advised parties should expect that a pre-hearing conference will be listed for a duration of thirty minutes.

(2) The practitioner with ultimate responsibility for the conduct of the matter on behalf of each party (the file principal), or alternatively, a practitioner who has a comprehensive understanding of the matter, will be expected to attend the pre-hearing conference.

(3) At the pre-hearing conference, the Presidential member will make an assessment of the matter. For the purposes of making the assessment, the Presidential member may adjourn the pre-hearing conference to a later date to allow for steps to be taken to explore or further explore possible settlement of the matter, and for this purpose may refer the matter for mediation or a settlement conference.

(4) In making an assessment of a matter in accordance with section 45 of the SAET Act, in addition to any material arising from a further exploration of the possibility of settlement, the Presidential member may have regard to the memorandum prepared by the conciliation officer at the conclusion of the compulsory conference and to any offer filed in accordance with Practice Direction 13.

(5) If the Presidential member is of the view, upon making an assessment of a matter at the pre-hearing conference, that the matter should be listed for trial, whether or not further steps should be taken to explore settlement or to complete trial preparation, an order may then be made allocating a trial date. In a routine case parties at a pre-hearing conference will be expected to have ascertained the availability of their lay witnesses for a trial on the next available date in accordance with Practice Direction 16.

[1] Subject to the limit under Rule 35 on the number of experts upon which a party may rely.
[2] Under Rule 32, any expert report upon which a party may wish to rely must be sought before the matter is first before a presidential member at a pre-hearing conference.

16. Trial listings

(1) A matter will ordinarily be listed for hearing at the direction of the Presidential member presiding at the initial or an adjourned pre-hearing conference.

(2) The Presidential member shall determine whether or not the matter to be listed is a "routine case". In deciding whether a matter is or is not a routine case, the considerations to which the Tribunal shall have regard include:

(a) the financial value of the claim;

(b) the nature of the remedy sought;

(c) the likely complexity of the facts, law or evidence;

(d) the number of parties or likely parties;

(e) the amount of oral evidence which may be required

(f) the importance of the claim to persons who are not parties to the proceedings;

(g) the views expressed by the parties; and

(h) the circumstances of the parties.

(3) Unless otherwise directed by the Tribunal, a routine matter will be initially listed only for the taking of evidence from the applicant and any other lay witnesses to be called by the parties with expert evidence to be taken at a later time.

(4) A routine matter can be expected to be listed for only one or (if necessary) two days for the taking of lay evidence.

(5) Unless the Tribunal orders otherwise, a routine matter shall be listed on the next available date on the trial roster. The Tribunal will provide information through its website which will allow parties to ascertain at any time the approximate week of the next available trial date.

(6) A matter which is not determined by the Presidential member to be routine will be listed at a time and for a number of days considered appropriate having regard to the matters in issue and the extent of the evidence to be placed before the Tribunal.

PART 5 USE OF ORAL EXPERT EVIDENCE IN THE TRIBUNAL

[Operative: 1 July 2015]

17. Objectives

This Part relates to the exercise by the Tribunal of its special powers in accordance with Rule 34 to direct that expert witnesses confer prior to giving evidence and give evidence concurrently or in a particular sequence.

18. Identification and selection of cases

In deciding whether or not the concurrent evidence procedure should be used, the Tribunal will take into account:

(a) the nature and complexity of the issues in relation to which expert evidence is to be given; and

(b) the areas of expertise and level of expertise of the experts who will be giving evidence; and

(c) the likely impact of using the concurrent evidence procedure on the length of the hearing and the costs of the parties; and

(d) whether both parties are represented; and

(e) the views of the parties; and

(f) other relevant factors.

19. The role of parties, their representatives and experts

(1) Parties and their representatives must ensure that all relevant things are done to facilitate the use of the concurrent evidence procedure.

(2) Experts must participate in the concurrent evidence procedure in good faith and must be willing to consider and comment on alternative factual premises and opinions, be willing to agree on matters and issues if appropriate, and must not be given, or accept, instructions not to reach agreement.

PART 6 CONDUCT OF HEARINGS

[Operative: 1 July 2015]

20. Telephone and video hearings

At the discretion of a registrar or a Member, any conference or all or part of any hearing may be conducted either by telephone or video link or other system or method of communication.

21. Evidence by telephone or video link, etc.

(1) A party seeking to have his or her evidence or the evidence of a witness taken by telephone, video link or other system or method of communication should apply to the Tribunal for an appropriate direction.

(2) Where a party has been given permission for evidence to be given by telephone, video link or other system or method of communication, the party must:

(a) take all steps necessary to facilitate the giving of evidence in that manner, including arranging for the witness to be available and to have access to documents that are likely to be referred to during the hearing; and

(b) provide the Registry with the contact details of the witness, his or her availability and any other information required by the Registry.

(3) The costs of a telephone or video link or other system or method of communication will be borne by the party who arranges the link unless the Tribunal otherwise directs.

22. Electronic communications to and from the Tribunal

(1) Subject to this rule and to any contrary direction of the Tribunal, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.

(2) Paragraph (1) does not apply to Tribunal staff acting in the course of their office or employment.

(3) Despite paragraph (1) and subject to paragraphs (4) and (5), a party to a proceeding which is being heard by the Tribunal, a lawyer or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.

(4) Any electronic communication permitted by this rule must—

(a) be made in a manner which does not interfere with Tribunal decorum, not be inconsistent with Tribunal functions, not impede the administration of justice, and not interfere with the proceedings;

(b) not interfere with the Tribunal's sound system or other technology; and

(c) not generate sound or require speaking into a device.

(5) Any electronic communication of evidence adduced or a submission made in proceedings, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Tribunal has ruled on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes, whichever occurs last.

(6) For the purpose of this rule, ***electronic device*** means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

23. Recording and transcription of proceedings

(1) The Tribunal will record only those proceedings or parts of proceedings where the presiding member has directed that the making of a recording is appropriate.

(2) A recording of proceedings or parts of proceedings before the Tribunal will only be transcribed where the presiding member has made a specific order to this effect. Running transcript (expedited provision) will only be ordered in exceptional circumstances.

(3) Where a presiding member has ordered that Tribunal proceedings be transcribed the parties may expect unless otherwise advised before the proceedings that a copy of the transcript will be provided to them on request free of charge. Transcription of proceedings is not guaranteed in every case and is at the discretion of the presiding member who may elect only to record proceedings and retain an audio file in which case the parties can expect that a copy of the audio file will be provided to them on request free of charge.

(4) Where the presiding member has directed that proceedings be recorded but not transcribed the audio file of the proceedings will be retained for a period of 4 years. A party who wishes to have the record of those proceedings transcribed may make written contact with the Registrar to facilitate their making a private arrangement at the expense of the requesting party for provision of a transcript of the proceedings.

(5) A record of proceedings will not be transcribed if a matter settles either during or on completion of the proceedings.

(6) A record of proceedings will not be transcribed in relation to pre-trial contested interlocutory hearings unless specifically ordered by a member of the Tribunal.

24. Interpreters

(1) An interpreting service to the Tribunal is provided by various contractors.

(2) The service provides interpreting facilities during Tribunal hearings for parties to proceedings and persons required to give evidence as witnesses in Tribunal proceedings.

(3) The service does not provide interpreters for representatives to take instructions from parties they represent or for communications during proceedings except to the extent that the Tribunal is prepared to provide an interpreter to facilitate the conduct of a compulsory conference, a settlement conference or a mediation.

(4) Representatives of parties who require interpreting services should notify the Tribunal by providing appropriate information on any document initiating proceedings or as otherwise requested. It is essential that such requests be made immediately when the need arises to allow the maximum possible time for the necessary arrangements to be put into effect.

(5) A request for interpreting services should provide the following information:

(a) the name, address and contact details of the representative requesting interpreting services;

(b) the language and dialect to be interpreted;

(c) the desired level of qualification of the interpreter;

(d) the parties involved in the case;

(e) the date or dates the case is listed and the date or dates that the interpreter will be required; and

(f) the time the case is listed or the time that the interpreter will be required.

(6) If for any reason the interpreter is no longer required (e.g. the case settles), the relevant Chambers must be notified at the earliest opportunity. Such notice should preferably be in writing or email but where notice is less than one day prior to the interpreting services having been required, telephone contact may also be made.

(7) If an interpreter attends unnecessarily (e.g. due to late notice of cancellation) the charge to the Tribunal may be passed on to the party concerned.

PART 7 – APPEALS

[Operative: 1 July 2015]

25. Content and service of appeal books and outlines of argument

(1) This direction is made with respect to the content of and the time for filing and service of appeal books and outlines of argument in appellate proceedings under section 67 of the SAET Act and is to be complied with subject to any contrary direction of a Presidential member made under Rule 50(2).

(2) Not less than seven days before the hearing the appellant shall file with the Tribunal copies of an Appeal Book and an outline of argument for each member of the Bench and shall serve a copy of the Appeal Book and outline of argument on the respondent(s).

(3) The Appeal Book shall contain:

(a) the notice of appeal;

(b) the decision appealed from;

(c) a copy of relevant portions of the transcript of evidence and of relevant exhibits.[3]

(4) Not less than 48 hours before the hearing, each respondent shall file sufficient copies of any additional transcript, or exhibits (if any) upon which it relies, and an outline of argument, and shall serve a copy on the appellant and other respondent(s).

(5) The outline of argument relied upon by each party should be as brief as possible and, without the permission of the Tribunal granted prior to the filing of the documents, is not to exceed ten pages. It should not be in the nature of a written submission.

(6) The outline of argument should include any case citations or other authority to be relied on. Upon the day of filing, a copy of the outline should also be provided electronically to the Tribunal and, where possible, it should include a hyperlink to any authorities cited upon which it is proposed to rely. Any case citation must include the particular pages or paragraphs to which reference is intended to be made.

(7) Photocopies of authorities should not be provided to the Tribunal unless a party is intending to read passages from that authority to the Tribunal.

(8) Any hyperlink to an authority cited, or photocopy of an authority provided to the Tribunal, if in the form of a medium neutral citation, must be in the Signed Portable Document Format (PDF/A) digitally signed by AustLII if that format is available.

[3] Parties preparing Appeal Books should endeavour to collate them in accordance with the approach required for the preparation of a Case Book under Supreme Court Practice Directions 6.8 to 6.17 inclusive.

PART 8 OTHER MATTERS

[Operative: 1 July 2015]

26. Return of exhibits

(1) Following the conclusion of the hearing and determination of a matter and any relevant appeal processes, the Registry will advise by letter the parties or owners of exhibits accepted into evidence that the exhibits are available for collection within a specified time. Parties or owners of such exhibits should collect or arrange for the collection or return to them of returnable exhibits from the Registry within the time specified in the Registry letter, after which time the Registry will commence destruction in accordance with paragraph (4) below.

(2) The Registrar may make an arrangement with a party to retain an exhibit(s) for a longer time than set out in the letter sent under paragraph (1). A request that the Registrar do so must be made to the Registrar in writing prior to the due date for collection.

(3) Exhibits may be retained on the file at the discretion of the Tribunal.

(4) Subject to paragraphs (2) and (3), uncollected exhibits will be destroyed one month after the date of the letter from the Registrar which advises that exhibits are available for collection.

27. Judgment delivery times

In any case where a judgment has not been delivered within the time contemplated by Rule 93, a party is at liberty to invoke the following protocol:

(1) A party may inquire about progress of the judgment by letter addressed to the President of the Tribunal.

(2) The party making such an inquiry will deliver a copy of the letter to all other parties to the action.

(3) The identity of a party making such an inquiry is not to be disclosed other than to the President and the other parties to the action.