



Date: 15 April 2014

Our Ref: Report 1 of 2014

Per: E- mail

Dear Colleagues,

### **Report 1 of 2014**

The following has transpired since our report of the 10 December 2013:

#### **1. Increase in travelling costs:**

We have been notified by the Rules Board that it has approved a travelling allowance of R5.00. However, please be aware that the tariff still needs to be gazetted and as soon same is on hand we will notify members. It is unclear whether we have received an increase over the rest of the tariffs and we are making enquiries.

#### **2. Windows XP:**

Colleagues who are using this programme are informed that Microsoft no longer supports it. As a result, if the programme is not changed, it would be more susceptible to viruses.

#### **3. Workshops:**

We have had further workshops in the Free State, Northern Cape and Kwa-Zulu Natal. Thus far we had 230 persons that have attended the workshops. We apologise to members for not being able to repeat the workshops in Gauteng. A workshop will be held soon in Limpopo. Due to our AGM taking place in June 2014 in Gauteng, members would be incurring a double expense for the AGM and the workshop. It has therefore been decided to temporarily suspend this workshop until after the AGM.

#### **4. The AGM:**

Members are hereby informed that our AGM will be held in Pretoria on the 14 June 2014. The notice, venue and agenda will be forwarded shortly. Members are kindly requested to diarise this event to attend the meeting. Please avail yourself for elections. We need to elect 6 members for the Executive Committee and 9 Provincial leaders. Your association seeks strong, dynamic leaders with a clear vision in taking SANAPS forward. If you believe you qualify, please do not hesitate in forwarding your name for nomination as per our Constitution. An appeal is made particularly to the new appointees to avail themselves. This is your future, this is your association.

5. **Feedback concerning SABFS and the Consultative Forum:**

We regret to inform members that whilst the SABFS has agreed to rotate the Chairperson of the Consultative Forum the individual against whom a litany of complaints have been raised (valued at about R16 500 000.00) would continue to remain as one of these Chairpersons. We therefore cannot have any meaningful dialogue with the Forum regarding disciplinary issues more so when the chairperson on the Board has placed an embargo on it. (So much for the signed pledges the Board insisted on regarding our Code of Conduct). It is patently clear that issues adversely affecting our income, due to the Board's failure to implement discipline, is not taken seriously. Whilst there is much to be done to enhance our lot, both financially and professionally, as matters now stand, we do not believe that this is the platform that would address this. We therefore have no intention, in the foreseeable future, to return to the Forum despite the Board's Chair's insistence.

6. **Meetings:**

**6.1 National Complaints Commissioner.**

A meeting took place on the 11/04/14 with the National Complaints Commissioner as a number of complaints regarding sheriffs and perhaps the Board have reached their offices. A further meeting has been arranged as the Commissioner does not understand the Board's role regarding complaints.

**6.2 Law Societies.**

We are going to attend meetings with the Cape Law Society (30/05/2014), KZN Law Society (25/04/2014) and the OFS Law Society (30/04/2014) regarding allegations of poor service from colleagues and late payment by attorneys. We thank all the Provincial leaders who will be attending these meetings. A report will be furnished in due course.

**6.3 Banking Forum:**

As members are aware, we attended a meeting on the 26 February 2014. We once more wish to draw member's attention to the banks dissatisfaction of late/ non- payments of the proceeds of immovable sales. It was agreed that, in the absence of a compelling reason not to pay, a claim would be placed against the Fidelity Fund by the attorneys within 14 days of notification of date of transfer. Colleagues are advised to treat this very seriously as any adverse claim made against the sheriff may affect his risk profile negatively with the Indemnity Insurers. There may also be disciplinary issues. So, if there is any reason for a delay please notify your attorney immediately.

Attention was also drawn to banks obtaining court orders excluding sheriffs in the removal of vehicles. We were once more given the assurance that this would not occur again.

## 7. Membership:

We are now 111 members. **We welcome Mr. Bakang Owen Khumalo, Mr. Andrew Kgopolo Nkhumise, Ms. Lydia Dikoro Monyamane and Mr. Adrian Reginald Cupido.** We once more re-iterate that, regrettably, it is not possible for a sheriff to have joint membership. As per our report dated 1 November 2013 no member has resigned and in fact our membership grew. We now intend to address a letter to SASS stipulating who our members are and requiring them to remove any name on our list from theirs. This will be done by the 30 April 2014. Please consider this notification to you as a mandate to us to address a single letter on behalf of all our members. If any member has any objections to this, please let us know immediately. We also attach a membership form should you not be a member and wish to join. **(Annexure A)**

## 8. Financing of Associations and Non-aligned Sheriffs.

We are proud to announce that the financial assistance we have been requesting from the Board has come into fruition. For members who may not be aware, about 6 years ago your Association agreed to the increase of the Board's levies provided a consultative forum be created and the Associations would be financed through these levies. The Consultative Forum and the financing of the Associations was a SANAPS initiative. There is a possibility that finances would be distributed in ratio to membership. An earnest appeal is therefore made to sheriffs who are non-aligned to join an association. Stand up and be counted. In addition to the deputies and office staff, we represent the largest sector of the profession. Do not let your hard earned money go to waste and unaccounted for. Someone needs to address your concerns regarding fee increments, more work and the protection thereof, improved rules and regulations, addressing stakeholders etc. We do this. In the past year alone we have conducted workshops nationally, benefitting 230 persons. We have empowered our less fortunate colleagues with computers and printers valued at R100 000.00. We have furnished our members with cameras valued at R15 000.00, in order to encourage electronic advertisements on our website, or your own, as required by the Consumer Protection Act. We are affiliated to the UIHJ the internationally recognised Sheriffs union which interacts and advises such bodies as the World Bank. All of this has been done without asking for a cent in contribution from members. Visit our website at [www.sanaps.org.za](http://www.sanaps.org.za) to learn more about us. Membership is free! **(Annexure A hereto is the membership form).**

## 9. Shell Fuel Discounts:

After extensive negotiations it would seem that this would not be possible. We are looking at other alternatives such as SASSETA and will keep members informed.

## 10. Rules Board:

We have submitted our comments to the Rules Board regarding the proposed amendments to:

- Uniform Rule 46 and Magistrate Court Rule 43.
- Uniform Rule 46(8) (a) and Magistrate Court Rule 43(7).
- We will be commenting on the Amendment of Regulations regarding appointments.

## 11. New Rules:

**11.1 As of the 1<sup>st</sup> April 2014** the Small Claims Court monetary jurisdiction increased to R15 000.00.

**11.2 Rule 46 (2) (b):**

**As of the 2 May 2014** sheriffs may directly address a registered letter to the Registrar of Deeds to affect an interdict. In other words, we no longer need to send the attachment to the sheriff whose jurisdiction falls within the deeds office and the old manner of attachment would once more apply.

**11.3 New Mediation Rules:**

**As of 1 August 2014**, these new Rules come into operation as per Gazette No: R183 of the 18 March 2014 which has already been forwarded to members. Should anyone else require this please contact us. Please also refer to the media report (**Annexure B**) hereto.

**11.4 Substitution of Rule 66 of the Rules:**

The Rules are hereby amended by the substitution for Rule 66 of the following Rule:

**Duration of Writs of Execution:**

**As of 2<sup>nd</sup> May 2014**, Writs of execution of a judgment once issued remain in force, and may, subject to the provisions of subparagraph (ii) of paragraph (a) of section 11 of the Prescription Act, 1969 (Act No.68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

## 12. Immovable Upliftments Magistrate Court:

The Registrar of Deeds in Gauteng has finally accepted the Western Cape decision of the matter between:

**The Sheriff for the Magistrate's Court Kuils River (First Applicant), ABSA Bank Limited (Second Applicant) v. The Registrar of Deeds, Cape Town (Second Respondent) Case Number: 9815/11.**

In effect this means that in terms of Section 66 (2), where the execution creditor is not the preferent creditor, Section 66 (4) will not apply and it is not necessary for the sheriff to uplift the attachment.

### 13. Launch of our updated Website: [www.sanaps.org.za](http://www.sanaps.org.za):

We have had over 6 000 hits on our website and **the A- Z Sheriff Manual** has been downloaded over 1 500 times. The updated website is now available. We encourage all new appointees to look at the A-Z manual. This gives guidance as to how you should set up an office, the legal and logistical requirements; both High & Low court service and execution, and the winding down of an office. The previous new appointees have found great value in the guidance provided during this new and exciting (and perhaps confusing) chapter in your life.

### 14. Collation of questions and answers raised during the workshops:

Here are some questions and answers raised during the workshops which members may benefit from.

*14.1 Can an attorney instruct a sheriff where to store the attached goods or does this lie within the discretion of the sheriff?*

In terms of Rule 47 (1) Magistrate Court, an attorney can instruct a sheriff as to where the attached goods may be stored. Under these circumstances, colleagues are advised to insist on a Rule 38 as all risks pertaining to the goods should not fall on the sheriff.

*14.2 The sheriff has rendered a return on a matter which was issued out of his geographical jurisdiction. Where must the bill be taxed?*

The bill regrettably, has to be taxed at the court from which the process was issued.

*14.3 The sheriff has been instructed to interplead in a Magistrate Court matter which was issued out of his geographical jurisdiction. Where should the interpleader take place?*

There is no clear Rule which gives guidance. Colleagues are advised to take the initiative and issue the interpleader summons within their jurisdiction.

There have also been general difficulties regarding High Court Interpleaders. Attached herewith please find **(Annexure C)** a useful article from the Executor which highlights some of the problems and present some solutions.

*14.4 In a participation matter after the sheriff has deducted his costs, would it be correct for the sheriff to first deduct the cost of his instructing attorney (that is the attorney who has advertised, etc.) and then calculate the distribution?*

Although it seems unfair there is no provision which allows the deduction of these costs.

*14.5 In a Magistrate Court matter the attorneys are well within their rights to draw up their own conditions of sale. What are the essential elements despite this leeway, which must appear in the conditions?*

- Reference must be made to the provisions of the Consumer Protection Act 68 of 2008.
- There must be full disclosure of the calculations of the sheriff's commission.
- There must also be full disclosure of the outstanding rates and taxes.

It is now becoming practice for attorneys to use the High Court conditions of sale (approved by sheriffs and the Banking Association) for Magistrate Court sales and though attorneys are not obliged to use this, we should try and encourage them to use the same conditions of the High Court.

*14.6 A sheriff has attached on a warrant and the goods have been removed. Before the sale, the attorney instructs the sheriff to attach and remove further goods that were hidden away by the execution debtor. Can the sheriff proceed with his second attachment?*

In an unreported case it was held that the sheriff cannot proceed with the attachment unless the earlier attachment is completed. It is also possible to attach on the re- issue of the warrant.

*14.7 Would the same apply if the attachment was done under a writ?*

No. The attorney can issue as many writs as may be required to satisfy the judgement.

*14.8 The sheriff receives a court order with one of the paragraphs therein deleted and countersigned by the attorney. There is no indication that this has been endorsed by the Registrar or Clerk. Should the Sheriff execute the court order?*

Where there is any amendment to any court order not endorsed by the Registrar or Clerk, the sheriff should not execute the order, but rather return same to his instructing attorney in order to have the court order properly issued.

*14.9 The sheriff has attached goods under several writs on behalf of different execution creditors against the same execution debtor (participation). A claim is made against the attached goods in respect of each of the participating matters. One of these matters is taken to court and the claim is dismissed. The sheriff believes that he cannot proceed with the sale as the interpleaders in the other matters have not been settled. The attorney insists that the sale must proceed. What should the sheriff do?*

We do not have the answer and are awaiting finalisation of the matter in court and will advise members of the outcome. Should anyone have any opinion on this please let us know.

We thank all who participated in the workshops and all who contributed to this report.

We kindly request members to furnish us with any feedback regarding this report or any other comments.

Is there anything else that we may do for you?

Yours faithfully,

Mr. M. Mangaba.

