



Date: 04 December 2014

Our Ref: Report 6 of 2014

Per: E- mail

Dear Colleagues,

### **Report 6 of 2014**

Further to our report dated the 14 October 2014 the following has transpired:

#### **1. Re- Demarcation:**

This is in total disarray. After the publication of the Government Gazette dated 31 October 2014 we contacted Mrs. Emily Dhlamini at the DOJCD who in turn referred us to the SABFS. The SABFS has informed us that it has an undertaking that the re- demarcation would be postponed. This is contrary to the speech given by the Minister on Friday 28 November 2014. Many colleagues have not as yet received any point to point jurisdictions and the court managers have not been informed as to any handovers. All that we can do is wait and see.

#### **2. Professional Indemnity Insurance:**

Members are aware that the PI Insurance does not cover all contingencies we expected from the policy. A meeting was held wherein it was confirmed that the Board's successful bidder Primak has not kept us covered in terms of the provisions of the Sheriffs Act and that effectively we were all in violation of these provisions and should not have received our Fidelity Fund Certificates. This is certainly not the fault of the profession but falls squarely on the shoulders of the Board. Whilst the Board is looking into the matter we will be required to continue with Primak in the absence of another broker. Primak has undertaken to get a legal opinion clarifying the requirement of minimum

compulsory cover in terms of Section 35 (a) (i) (ii) and (b) of the Act with particular regard to service and execution.

### **3. Meetings with Various Stakeholders:**

#### **3.1 Chief Master:**

A meeting was held with the Chief Master Adv. L. Basson on 31 October 2014 at Pretoria. The purpose of the meeting was purely to re-affirm what the Master expected from Sheriffs – the compliance of Section 19 of the Insolvency Act, the Master's commitment to be more circumspect in taking away work from sheriffs for trustees, for sheriffs being appointed as valuers and auctioneers for insolvent estates and the website created by the Master which would allow all sheriffs to have access to bonds of securities and interim orders in order for sheriffs to comply with the provisions. The website still appears to be under construction but colleagues will be informed as soon as this is available.

In the interim we are arranging for the provisional orders to be forwarded to each respective sheriff after discussions with the registrars in Gauteng. A similar arrangement will be made with registrars nationally. Please also refer to **(Annexure A)** attached Ex parte Erasmus for you to understand the importance of your role regarding this provision (Section 19).

We look upon this as a wonderful opportunity in boosting sheriff's incomes by way of the valuations and auctions.

#### **3.2 Standard Bank:**

A meeting was held with Standard Bank on 13 November 2014 at the Standard Bank's Head offices at Simmonds Street Johannesburg. The purpose of the meeting was to ensure an enhanced service and relationship between sheriffs and the bank. We were requested to outline any problems we may have with the bank's attorneys and any suggestions as to how to streamline and possibly shorten the process from date of judgement to date of transfer. If any colleagues do have any problems with any Standard Bank attorneys which they are unable to resolve, please let us know so that we may be of some assistance.

Of interest were the remarks by Mr. Gerald Perumal (Head of PIP Recoveries) who assured us that there will be far less last minute cancellations (as we are presently experiencing) and that there will be more work from the bank. We have also suggested an Indaba hopefully sponsored by Standard Bank between sheriffs and the bank's attorneys in order to have a discussion regarding enhanced service delivery to the bank.

The bank has requested a detailed report regarding the above mentioned. Please find same marked **(Annexure B)** hereto.

### **3.3 Banking Forum:**

A meeting was held on the 17 November 2014 in order to discuss a common approach in responding to the Rules Board regarding the capping of commissions. Attached herewith **(Annexure C)** is our submissions to the Rules Board. The massive new commissions which the banks are agreeable to (subject to the approval of the Rules Board) would require extensive marketing from us. Details of this marketing will be forwarded to all colleagues once this has been finalised. In the interim, sheriffs are welcome to use the SANAPS website [www.sanaps.org.za](http://www.sanaps.org.za) for your advertising at no cost to yourself.

### **3.4 Free State Law Society:**

A meeting with the Free State Law Society took place on Friday 7 November 2014. The following was discussed:

#### **Changing Conditions of sale by attorneys.**

- (a) It was emphasized that the attorneys should use the conditions of sales which has been approved and is publicized on the website of the board, not the edited version which the attorneys mostly change according to their terms. The Law Society C.E.O agreed to pass the message to their members to adhere to the format.

Unlawful Enforcement of warrants for the Repossessions of Motor Vehicles.

- (b) Mr. Chris de Wet recommended that Law Society should inform and encourage and compel its members not to use the bank agents to repossess vehicles, and the Law Society agreed to do so.

Case Flow management Committees and National Efficiency Management Committee.

- (c) It was agreed that both associations should elect their representatives to be part of Case flow Management committees and National Efficiency Managements for sheriff's inputs. This information shall be communicated by the Law Society to the Board.

**Instructing/ Correspondent Attorneys.**

The Law Society has urged the sheriffs that their accounts should be paid by the correspondents attorneys because they are the ones which the office of Sheriffs have the contact with, responsibility should not be shifted to the instructing attorneys.

**Conveyance Rules.**

A lengthy discussion was held regarding the diverse opinions of the two associations. With reference to the appointment of conveyances in terms of the new rules should this be promulgated. No conclusion was drawn.

We thank our colleagues Mr. A.K. Nkumise, Mr. Mosikili Bothata and Ms. Carey- Lee Seema in attending.

**3.5 SASSETA:**

A meeting was held on the 6 November 2014. SASSETA has advised us that we should seek a seat on the Legal SETA Chambers and that they will assist in arranging this. Attached herewith is our letter motivating same (**Annexure D**). There are on-going talks with SASSETA regarding the financing of our projects.

**4. Training Workshops:**

#### **4.1 Pretoria Workshop:**

We have had a very successful workshop on the 18 October 2014 in Pretoria where over 60 people including sheriffs, deputies and office staff attended. We have been requested to have similar workshops nationally but regrettably, financial and time constraints, does not permit this. For those who are unable to attend please find the workshop's material attached herewith **(Annexure E, F and G)**. **Please note that these are proposals and not yet enacted as Rules and are not yet applicable.**

Colleagues will be informed when the Rules have been gazetted. Should you have any queries at this stage please contact or e- mail the Deputy Chairperson Mr. L. F. Sharp on Tel: (041) 484 -3960 ext 5 or E- mail: [lfsharp@pe-sheriff-north.co.za](mailto:lfsharp@pe-sheriff-north.co.za)

#### **4.2 Donations:**

Approximately 400 people have attended our workshops over the last 2 years. This was done without any funding from the SABFS and from SASSETA, but purely through the generosity of our donors to whom we once more extend our thanks. Should any member wish to donate please do so at the following banking details:

**Account Name:** SANAPS

**Bank:** Nedbank

**Account Number:** 1001658892

**Branch Code:** 103610

As a reference please use the word donation, your name and jurisdiction or you may remain anonymous.

#### **5. Membership:**

We are now 141 members. If you have not yet signed a membership form please find one attached, complete and fax it back to the Secretary on fax: (011) 760- 6525.

#### **6. Fees:**

We are addressing another letter to the Minister and trust that we will have a positive feedback. We have not even had the courtesy of acknowledgement of any of our previous correspondence. Attached herewith is our latest letter addressed to the Minister. **(Annexure H)**

**7. ATASA Auctioneering Course:**

Please refer to **(Annexure I)**. 21 sheriffs responded and the Chairperson is requesting an extension. There would be no legal or financial ramifications to the learners who opted out.

**8. Counsel's opinion on the effect on Rescissions/ Appeals/ Reviews/ Debt Counselling/ Petitions - on Writs/ Warrants/ Orders in all Courts:**

We are as yet awaiting a response from the Board whether it would brief counsel in drawing up guideline in order to clarify this continuously vexing problem.

**9. SANAPS Website:**

To date we have had over 38 000 hits on our website and colleagues are encouraged to use the free advertising platform on our website [www.sanaps.org.za](http://www.sanaps.org.za) which is for sheriffs only. In order to register, if you have not already done so, please contact Ashraf Dawood on e- mail: [ashrafd@mweb.co.za](mailto:ashrafd@mweb.co.za) who will gladly assist you with the registration.

**10. Collation of Questions and Answers Raised by Colleagues:**

**Colleagues are advised to look at the relevant Rules and Acts before acting on any information here below.**

❖ **Q. How is an ad hoc sheriff appointed?**

- A. An Ad hoc sheriff is appointed in a situation where there is a conflict of interest or where there is no sheriff appointed within a specified jurisdiction. Any party that requires a sheriff under these circumstances would request such an appointment at the SABFS, which would then appoint accordingly. We have requested the policy/ guideline as to how the Board appoints individual sheriffs but have not had the courtesy of a response to date.**

❖ Q. The sheriff has goods lying in his storeroom for an inordinate long time and the attorney is not furnishing further instructions. What should the sheriff do?

A. Debit the attorney's account on a monthly basis with the storage fee. This generally tends to get a reaction if the attorney is still practising.

❖ Q. The sheriff has been instructed to release the goods but the defendant refuses to collect? What should the sheriff do?

A. Ask your instructor whether he is willing to pay for the goods to be returned. (This is very unlikely).

The goods may be defrayed in terms of Section 71 of the Magistrate Court Act but the advertising costs may exceed the value of the goods.

Perhaps the instructing attorney may be requested to furnish the sheriff with a sales notice in order to sell. However if there is a question of advertising once more this may not be of any assistance.

The whole issue needs to be revisited with the Rules Board which we will attend to.

❖ Q. Can a sheriff remove assets that he has attached but which have now been removed out of his jurisdiction?

A. No. Only the sheriff within whose jurisdiction the assets have been moved has a right to do so on a re- issued warrant indicating the new address. An immediate removal endorsement can easily be obtained given the defendants conduct.

❖ What is the check list before signing the transfer documents for an immovable sale?

A. The check list is:

- Has your commission been paid?

- Is the full purchase price (together with interest if necessary) secured?  
By this we mean does the sheriff have in trust the 10% deposit and a bank guarantee in favour of his trust account for the balance of the purchase price? Alternatively has the sheriff the full purchase price in his trust?

If the answer to any of the above is **NO** the transfer documents should **NOT BE SIGNED** until the specific problem is dealt with.

NB: All proceeds must be held by the sheriff in trust and not by his instructing attorney or anyone else.

NB: Payment can only be made into the execution debtor's bond account and no other account including the instructing attorneys.

❖ *Q. Can an attorney demand that the attached goods only be removed 24 hours before the auction in order to avoid storage fees?*

- A. This practice should be discouraged. The attorney must understand that the sheriff may be required to separate, allocate, number and display the goods in the best possible manner including other goods to be auctioned for other matters and this would require more time for preparation. The sheriff should be firm and inform his instructing attorney a reasonable period for the removal in order that the sheriff may properly auction the assets.

❖ *Q. The attorney instructs the sheriff to remove the attached goods after the attachment has lapsed. Should the sheriff do this?*

- A. No. This is illegal. It is therefore very important that sheriffs notify their instructor immediately of the lapse.

❖ *Q. An immovable writ has been issued from the North Gauteng High Court. Can the cancellation of the sale in terms of Rule 46 (11) (a) take place in KZN where the property was attached?*

- A. No. The KZN Court has no jurisdiction and the matter must once more be referred to the North Gauteng High Court.



❖ Q. A mechanic refused to release a vehicle he has repaired for which he has received no payment despite the sheriff producing a court order for the vehicles removed. Does the mechanic's lien take precedence over the court order?

**A. Yes. The vehicle cannot be removed until the mechanic's account has been settled.**

As this is the last report for this year we wish all our colleagues, their staff and family a joyous Christmas and a prosperous New Year. It's been a tough 2014 but let's hope that next year will be far better.

The Secretary will not be available from the 5 December 2014 to the 5 January 2015. All queries should be directed to the Deputy Chairperson Mr. L. F. Sharp whose contact details are as follows:

**Tel: (041) 484 3960 ext 5 Fax: (041) 484 6318 E- mail: [lfsharp@pe-sheriff-north.co.za](mailto:lfsharp@pe-sheriff-north.co.za).**

We thank all who participated in compiling this report.

Yours faithfully,  
Mr. A. Makwetu.

Serving Justice