



Date: 09 March 2015

Our Ref: Report 1 of 2015

Per: E- mail

Dear Colleagues,

**Report 1 of 2015**

Since our last report on 4<sup>th</sup> December 2014, the following has transpired:

**1. Appointment of New Members On The SABFS:**

The under mentioned have been appointed as members of the Board effective as of the 1st March 2015:

Ms. C Mabuza – Chair\*

Ms. Petro Roodt\*

Ms. Noma Jwara Soga\*

Ms. Mmathoto Lephadi\*

Mr. Ignatius Klynsmith\*

Mr. Thamsanqa Tembe

Mr. Lesiba Mashapa

Prof. Lovell Fernandez

Mr. Meko Magida

Ms. Nomankhosi Skosana

Adv. Hisamodien Mohamed

(\*sheriffs)

SANAPS congratulate each of the new appointees and look forward to a fruitful working relationship with the new Board. We particularly thank our nominees Mr. Ignatius Klynsmith and Ms. Mmathoto Lephadi for availing themselves.

**Mr. Klynsmith** thanks all for the congratulatory and best wishes and states that he will do his utmost to add value to the activities to the Board and in particular, enhance and protect the interests of the profession. He also intends to improve the communication between the Board, SANAPS, SASS and every sheriff in SA.

**Ms. Lephadi** thanks all for the congratulatory messages and states: There is a saying in my culture: "Motho ke motho ka batho ba bangwe"- A human being is who they are because of others".

We also extend our thanks to our unsuccessful nominees **June Anne Thomas, Johannes Tseke and Amrith Chabilall** for availing themselves.

## **2. Sheriffs Handbook:**

The book was launched on 23/02/15 at the SABFS's offices in Cape Town. We thank all those who have participated, particularly Johan Fourie and Harry van Nieuwenhuizen on a job well done. It is believed that the book may cost about R650.00 but it is hoped that it will be subsidised by the SABFS for those sheriffs with smaller offices.

## **3. Labour Court:**

A meeting was held on the 04 March 2015 between the CCMA and SANAPS regarding the amendments and other cost related matters. There are going to be some radical changes. The purpose of the meeting was for inputs by the profession for support certain new radical proposals made by the CCMA. As soon as these proposals are formally handed to us, (we are not permitted disclose anything as yet) we will forward same to all members for considerations and comment.

## **4. Insolvency Orders:**

The "dashboard facility" on the Master's website: [www.justice.gov.za](http://www.justice.gov.za) (then follow the Master's tab) is up and running. **This facility only deals with applications in Gauteng.** Attached herewith is an

instruction from the Registrar of the High Court as to what the sheriff is required to do. (**Annexure A)**). Colleagues are advised to go to the Master's website, ascertain whether there are any court orders for his/ her jurisdiction and collect the original court order from a box in Room number 001 at the Gauteng High Court as arranged with the Registrar, Mr. Vivendran Pather. We are presently arranging a similar collection point in Pretoria.

#### **5. Media Reports:**

- **The City Press** reports on -SA's new gambling queen -Congratulations to the Chairperson of the Board Ms Charmaine Mabuza who is now the Lotto's new boss.
- **The Citizen** reports on Emolument Attachment Orders:

Arising out of the Marikana tragedy, some mining houses, inundated with EAOs, have now decided to challenge these in the Western Cape Provincial Court. SANAPS has requested the Rules Board, a number of years ago, to put an end to this exploitive procedure and used a 2008 University of Pretoria study as a motivation. This very report is presently being used in court. The DOJCD, the National Credit Regulator and the courts have long ignored this and we trust that the unfair practices will now be dealt with by the authorities. Some of the problems raised were the pre-signing of the consent to judgement and jurisdiction forms resulting in massive maladministration and unfair service. As a result of the clamp down, work sources of EAOs services have dried out. One Law, for example, has been placed under liquidation. Colleagues will be informed of the outcome hereof as soon as the judgement is available.

- **Radio 702** reports on AARTO:

It is now 17 years since AARTO was passed into law, but despite this, lawlessness and a culture of total disrespect continues unabated on our roads as evidenced from Government's own statistics. We are continuously pressing the RTIA and Government to implement the provisions that authorises the sheriff to attach, together with the point demerit system, as we believe that this would be one way in changing these bad habits.

The RTIA has admitted that it only recovers 4% of all demands despite spending millions of rands for postal services.

## **6. Rule 46 (11) (a) Revisited:**

For the sake of brevity colleagues are referred to the judgement of **Sheriff, Hlabisa and Nongoma v Shobede 2009 (6) SA 272 (KZP) 2009 (6) SA p272 (Annexure B)**. In essence the court says that we must make a clear distinction between the report to a Judge in Chambers as contemplated in Rule 46(11) (a) as opposed to the sheriff seeking judgement against a defaulting purchaser under Rule 46(11) (b). Costs will not be granted when a formal application (as opposed to a report) is made.

## **7. Further issues to be dealt with at the Banking Forum:**

### **➤ Court Orders:**

Attached herewith (**Annexure C**) is a copy of a court order. It is alleged that the banks tracers removed the vehicle by impersonating the sheriff. If any sheriff has experienced this please inform us as we intend to take the matter up with the Banking Forum and the Judge President of the respective courts. We have also made it patently clear to the Forum that sheriffs are not willing to execute orders which have been partially executed by tracers simply because we may be legitimising an otherwise illegal act. Attached herewith is another court order (**Annexure D**). In this particular case, the tracer brought the vehicle with the defendant to the sheriff's office expecting the sheriffs to confirm that the attachment was legal. The defendant was advised that the attachment was illegal after the tracer admitted he was not the sheriff, and the vehicle was handed back to the defendant. The sheriff refused to participate in this procedure. What is clear from the above two orders is that agreements made at the Forum, intentionally or unintentionally, are not filtering through to the bank's attorneys and their traces.

### **➤ Private Sales:**

It has been brought to our attention that the price the bank receives for a cancelled sale in execution could be bettered in our auctions. To this end we intend to propose to the banks that the sale should not be cancelled, but a reserve price of the last offer to the bank should

be made at the sheriff's auction. **The proposal has already been forwarded to the Rules Board.**

➤ **Marketing Fees:**

We have received a number of complaints from colleagues who have actively marketed immovables only to have the sale cancelled at the very last moment, and for which the attorneys refuse to reimburse the sheriff. This is another issue that we intend to settle with the Banking Forum. **Colleagues are advised that should any additional work be done, this should be by agreement with the attorney prior to the service being rendered.**

Are there any further issues colleagues may wish us to take up with the Forum? Please e-mail this to us.

**8. Additional work & Fees:**

Our Eastern Cape colleagues continue to have talks with the local municipalities and traffic authorities with the promise of new work. Please refer to points 3 & 4 here above regarding Labour Court matters & Insolvency orders, the latter for Gauteng sheriffs only. And of course please do not forget to charge a service/ execution fee together with the travelling allowance of R5.00 per km as per the new Magistrates' Court tariffs. Also refer to 14 here below on our free advertising platform.

**9. Further Comments to the Rules Board:**

We have submitted comments on the following to the Rules Board:

- Comments on Magistrates' Court Rule 21B.
- The Capping of immovable Commissions. Uniform Rules Items 5 (xiv) and item 16 (a & b) of table C Magistrates' Court Rule.
- The Sheriffs Act Comprehensive review.
- Further Comments to R 46.
- Revised amendments to the Promotion of Access to Information Rules.

**10. New Mediation Procedures:**

The Minister has invited us for the launching of the New Mediation Procedure. Mr. A.G. Mashele from the North West attended on SANAPS behalf and furnished the following report:

*On the 16 February 2015 in the North West, Mafikeng, the minister of Justice and Correctional Services, honourable T. M. Masutlha launched the Mediation programme.*

*Mediation can be described as a process by which a mediator assists the parties in a legal dispute such as facilitating discussion between the parties.*

**The advantages of mediation:**

*It is considerably less costly than court litigation;-Fees are agreed upfront and the parties contribute equally to payment;-It is a voluntary process from which the parties can withdraw at any time. There are no court fees and the mediator is entitled to charge a fee according to a fixed tariff.*

**Sheriff's role in mediation:**

*Any interested sheriff who would like to become a mediator can approach the clerk of the civil court for an appointment as a mediator. This can only be arranged and be held at the court premises and not the sheriff's offices. **Sheriffs are allowed to serve & execute Mediation processes.***

**Where do I go for mediation?**

*Any person can approach the clerk of the civil court which has a jurisdiction in respect of the dispute and the clerk of the court will arrange the Mediator. The Mediator is the person that the parties choose with the help of the mediation clerk from a panel of accredited Mediators appointed by the Minister of Justice and correctional services. All mediators must undergo mediation training.*

**The following areas have been identified for mediation:**

**Gauteng Courts:**

*\*Johannesburg Central\* Soweto\* Randburg\* Krugersdorp\* Kagiso\* Pretoria  
North\* Soshanguve\* Palm Ridge [Ekurhuleni]\* Sebokeng*

**North West:**

*\*Mmabatho\* Temba\* Potchefstroom*

*Mediation will be rolled out to other provinces in the next two years.*

*Examples of matters that can be heard in Mediation are maintenance, contractual disputes or vehicle accidents.*

We thank Mr. Mashele for this informative report and for his attendance on behalf of SANAPS.

**11. PI Insurance:**

As members are aware, those sheriffs insured by Protektum are not covered for damages immediately prior to the release of goods. We have asked the Board and Primark to clarify this as we see no purpose in purchasing this insurance without this cover. To date hereof there has been no effective response. We are pursuing the matter.

**12. Donations To Our Less Fortunate Colleagues:**

We have 2 CPUs, 2 keyboards, & 1 screen available for any colleagues who may be in need. Please contact the secretary should you require any of these.

**13. Donations To SANAPS:**

As a result of conducting workshops over the last 2 years, where 400 people benefitted, our funds are depleted.

Should anyone care to donate, here are our banking details:

**Account Name:** SANAPS

**Bank:** Nedbank

**Account Number:** 1001658892

**Branch Code: 103610**

We once more express our gratitude to all those who have so generously donated to our cause.

**14. SANAPS Website [www.sanaps.org.za](http://www.sanaps.org.za):**

Are you taking advantage of the free advertisement feature on our website? You can charge R125.00 & R250.00 per advert for a movable & immovable respectively. To date hereof we have had over 47 000 hits on the website.

In order to register, if you have not already done so, please contact Ashraf Dawood on email at [ashrafd@mweb.co.za](mailto:ashrafd@mweb.co.za).

**15. Collation of Questions and Answers Raised By Colleagues:**

➤ **How do I calculate the new Travelling Allowance in the Magistrates' Court?**

There has been a great deal of confusion regarding the new travelling allowance in the Magistrates' Court. The non-chargeable travelling fee from 0 to 20 km has been done away with. Please refer to 4 (a) of the tables. You must now charge travelling costs from your office or your local court (as the case may be) from 0 to 20 kms.

**This must not be confused with the service fee 1 B (a) which is a separate fee.**

**As an illustration:**

Your deputy has travelled 18 kms to serve. On the assumption that there was only one process, the travelling allowance must be calculated as follows-

**18kms x 2 (going & returning) x R5.00 = R180.00.**

**Prior to 24/02/15, the travelling allowance would be R0.00.**

To simplify matters, those colleagues who serve High Court processes should use the very same travelling allowance formula for the Magistrates' Court.



This Association is proud to announce that our continued calls to the Rules Board to do away with the cost anomaly between the Magistrates' Court and the High Court has finally been heeded. **Colleagues have called us and remarked how this amendment has shown a marked improvement in their income.**

➤ **What is the effect of a sale of a business on a warrant?**

Many deputies are stumped when informed that the execution debtor has sold the business to a new owner. Does the execution process stop? Attached herewith please refer to **(Annexure E)**. The notice is required in terms of Section 34 (1) of the Insolvency Act and the deputy can then clearly establish who is liable for the debt, and more importantly whether the change of ownership is a mere sham to avoid settling the judgement. Deputies must ask for proof of the advertisement and in the absence of proof thereof, proceed with the execution.

➤ **Which takes precedence? - Court Order v a Lien:**

Please ignore all previous remarks we have made, with apologies, regarding the above mentioned.

It has been brought to our attention (for which we are truly grateful) that in the circumstances wherein a lien exist as a personal right (e.g. A mechanic's right to retain a vehicle until paid for services rendered) such a lien can only be exercised against the owners of the vehicle by the mechanic. If the court order cites a different creditor (e.g. a bank) the court order will take precedence over the lien and the sheriff must execute. We thank all sheriffs who have thrown more light on this matter.

➤ **At what point during the legal process can the debtor raise the defence of debt counselling in order to stay the execution?**

The debtor may raise this defence at any time **prior** to receiving the Section 129 notice.

➤ **Who appoints an ad hoc sheriff?**

The SABFS.

**16. Condolences:**

We express our deep felt sympathy to the family of our late colleague Mr. Tsietsi Chechela, sheriff of Ladybrand, who tragically passed away in December 2014.

**17. Membership:**

We are now 144 members. 2 members wish to remain anonymous because of fear of victimisation and harassment. Attached herewith is our list of members (**Annexure F**). After having read the above, do you feel you are better informed? Do you feel that this association is looking after your interest? If so, if you are not listed as a member, spare us a few minutes, complete the membership form (**Annexure G**) and let your voice be heard.

We thank all who contributed to this report and welcome any comments and suggestions to be forwarded to the secretary at: [iqubaldawood@gmail.com](mailto:iqubaldawood@gmail.com).

Yours faithfully,  
Mr. A. Makwetu.

Serving Justice