



Date: 18 May 2016

Our Ref: Report 2 of 2016

Per: E- mail

**This report is sent exclusively to SANAPS members. We recommend that you share this with your office staff and deputies as there is beneficial information which may enhance your daily operations. It is up to you whether you wish to share this report with non- SANAPS members.**

## Report 2 of 2016

### **1. New Membership and Farewells:**

We are now 154 members. We welcome Mr. Godfrey Tonjeni, Sheriff of Tabankulu, - Eastern Cape and Mrs. Babsie Van der Merwe, Sheriff of Randfontein, Gauteng. We are growing and will continue to do so.

The following SANAPS members have asked that their names be removed from SASS's list:

1. Mr. Godfrey Tonjeni – Sheriff Tabankulu
2. Mr. Mbongeni George – Sheriff Cala & Elliot
3. Mr. Pakama Mlandu – Sheriff Barkly East & Maclear
4. Mr. Sisa Mduzulwana – Sheriff MT Ayliff
5. Ms. Nokuthula Joya – Sheriff Nqamakwe

6. Ms. Ayanda Hlanganyane – Sheriff Dutywa
7. Mr. Luyanda Tonjeni – Sheirff Libode
8. Mr. Nokwanda Nyabaza – Sheriff Engcobo
9. Mr. L.T. Leshosi – Sheriff Somerset East
10. Mr. Ncotho Lucas Mangonyane – Sheriff Taung
11. Ms. Phenie Matilda Mapotela – Sheriff Schweizer- Reineke

We bid farewell, through retirement, Mrs. Annemarie Bower, Sheriff of Cradock, who has served this profession with distinction and honour for what we believe to be a record 40 years. Annemarie's unstinting royalty and guidance to SANAPS is greatly appreciated. Thank you Annemarie!

We also bid farewell, through retirement, Dawie Ferreira Sheriff of Clocolan who has served the profession with distinction and honour for 21 years. We thank Dawie for his support.

We wish them both well into the future.

## **2. Eastern Cape Workshop and related matters:**

### **2.1 The following tendered their apologies:**

Mr. A. Makwetu  
Mr. Z.A. Sigele  
Mr. Bruce Rose Innes  
Mr. A.K. Nkhumise  
Mr. Ian Burton

### **2.2 Section 53 Applications:**

The theme of the workshop was how to increase your income. In depth discussions were held as to how to apply in terms of Section 53 of the Act for remunerative work done outside the profession. A number of colleagues wish to apply for this and we have agreed to assist in motivating such application. Should anyone require assistance in applying please contact the Secretariat. All correspondence will be dealt with in the strictest of confidence. Colleagues are advised to apply for this

particularly when you are unable to earn an income from the profession, rather than giving it up or seeking other means to raise your income.

### **2.3 Free computers and printers:**

10 Eastern Cape colleagues applied for this. Our Eastern Cape colleagues will receive these by the 28 May 2016. This is SANAPS commitment and action towards empowering our less fortunate colleagues. Should anyone require a free computer or printer, please get in touch with the Secretariat. We have thus far empowered 12 of our colleagues. Terms and conditions will apply.

### **2.4 SANAPS free sheriff computer programming:**

Only SANAPS members will receive this free of charge. However maintenance and updating cost would be required which will be much lower than what we are presently paying. The idea is to have a trouble shooter in each province to minimise the turnover repair time. Members will be kept informed. The programme is presently being drawn up and tested. Terms and conditions will apply.

### **2.5 Traffic work:**

Hopefully AARTO will roll out soon in Gauteng. SANRAL is issuing e- toll summonses. **(Annexure A).**

However please be aware that the defendant's address on the summons is not a domicilium address as stated in the instructing letter (Thank you Lana Nel).

The Western Cape business model and costs for municipal traffic warrants was discussed and the Eastern Cape members have decided to likewise approach their local authorities.

### **2.6 Legal Obligations:**

At least 2 colleagues have explained to us that they have been fined R12 000.00 by the SABFS for their failure to complete the Magistrates Court Form. We have advised them, as we do to all colleagues, that as Magistrates are no longer authorised to complete this form, it was impossible to comply and therefore they should not be fined. Should you have had a similar problem, please notify us and we will take this up with the Board on your behalf should you so wish. In so far as the Magistrate Certificate is concerned for the 2016 period please refer to **(Annexure B).**

Should anyone require any assistance regarding the 31 July compliance please contact us timeously. The Board has adhered strictly to the submission time limits and all those who have failed to comply were charged and fined.

### **SABFS Desktop Inspection Model:**

There has been uproar and much confusion regarding this. Attached is SANAPS response to the SABFS (**Annexure C**). We will keep members informed.

### **2.7 Sheriffs grants by the SABFS v empowerment:**

The Board is not allowed to give any sheriff any grant as no provisions for this exists in the act or regulations. As it is, according to the Board, it barely has funds to run its day to day activities. Colleagues have clearly expressed that rather than waiting for handouts, the Board should support the professions' motivation for maintenance and family violence work. The Board should fully support SANAPS against its stand of illegal repossessions of motor vehicles by some banks. Colleagues would prefer empowerment rather than handouts. SANAPS believe that empowerment is not how powerful your association is but how your association empowers its members.

### **2.8 SAPS assistance:**

Our colleagues complained of the failure of police to assist them, they were referred to Rule 8 (2) of the Magistrate Court Act and SAP Standing Order Number: 274 which they need to bring to their attention of the Station Commander. The SAP must assist the sheriff when this assistance is required.

### **3. Meeting with CCMA - 25 April 2016:**

We were the only association present. Of concern were the complaints of tardy payments by the CCMA. The CCMA acknowledges this, apologises and has appointed a new person to handle payments. She is Charmaine Ngwenya e- mail: [charmainen@ccma.org.za](mailto:charmainen@ccma.org.za). All statements should be forwarded to her and should you be dissatisfied please escalate this to Mr. Wabile Tel: (011) 377- 6650 e- mail: [KatlholoW@CCMA.org.za](mailto:KatlholoW@CCMA.org.za).

The appeal in the matter between **MBS Transport CC and Sheriff of Magistrates Court Kwamhlanga** and others was heard on 10 May 2016 and judgement has been reserved. We will keep colleagues informed.

### **4. Standard Banks direct contact details:**

Should any sheriff have any query regarding any Standard Bank matter and is unable to resolve same with the instructing attorney, please contact Mr. Tony Kennedy at: e- mail: [Tony.Kennedy@standardbank.co.za](mailto:Tony.Kennedy@standardbank.co.za). Mr. Kennedy has undertaken to expedite all matters.

## **5. Meetings/ Workshops:**

### **5.1 SANAPS AGM:**

Colleagues are once more reminded to reserve the **16 July 2016** for our **10<sup>th</sup> AGM** which will be held in the Western Cape. Let's make this a special occasion! The venue and agenda will be forwarded closer to the meeting date.

### **5.2 Gauteng, North West, Limpopo, Mpumalanga and part of OFS Training Workshop:**

Our next workshop will be held on the 04 June 2016 at the Premier Hotel in Pretoria. Please refer to **(Annexure D)**. Please R.S.V.P.

### **5.3 Law Society Meetings:**

**Kwazulu Natal:** 13 May 2016, 26 August 2016 & 21 October 2016.

**Free State:** 27 May 2016, 9 September 2016 & 8 November 2016.

**Northern Province:** 11 August 2016 & 20 October 2016.

We kindly request colleagues who wish to avail themselves to contact the Secretariat.

### **5.4 Consultative Forum Meeting:**

The meeting will be held in **Cape Town on 20 June 2016**. Would any 2 of our Western Cape colleagues avail themselves? Please contact the Secretariat. There are many outstanding issues from previous meetings and once this has been resolved, hopefully in our next meeting, we will furnish a report. Examples of the outstanding issues are the necessity to furnish IT3B certificates, bank charges certificates, the incoherence of the residue form and the expenses incurred by the SABFS seen against our levies. The new issues we intend to raise is the desktop inspection model, the proportional reduction of levies and insurance payable to retired sheriffs and the Board's persistent habit in making unilateral decisions affecting the profession. Is there anything else you wish us to deal with at the Consultative Forum Meeting? Please contact the Secretariat.

**6. Proof of payment fraud:**

Colleagues are cautioned to please be aware of fraudulent proof of EFT payments. Do not assume that payment has been made until this reflects in your account. A number of colleagues were caught unawares and have subsequently lost out.

**7. Proposed Rule Changes:**

**7.1 Proposed amendments of Item (5) (c) (iv) of uniform rule 68 and item 14 (a) of table c of annexure 2 to the magistrates' courts rules: tariff for withdrawal or stay of attachment.**

**7.2** We attach the joint proposals (**Annexure E**).

**7.3 Invitation to comment on proposed amendments to the Rules and Forms of the High Court and the Magistrates' Courts pertaining to Execution of Immovable Property**

We attach **Annexure F** and kindly request any comments to be forwarded to the Secretary by the 23 June 2016.

**8. Illegal motor vehicle repossessions:**

Colleagues are kindly referred to

[https://www.youtube.com/watch?v=06CkBYxzjgo&list=PLggz6dY\\_v4H98VN3VcHKRgrt65elShma&index=66](https://www.youtube.com/watch?v=06CkBYxzjgo&list=PLggz6dY_v4H98VN3VcHKRgrt65elShma&index=66)

This is SANAPS media interaction in preventing these illegal acts. We have also written to the Chief Justice regarding this and he in turn referred this to the Rules Board and to the Banking Association. The Banking Association has to date failed to respond to our allegations despite numerous reminders. We are pressing and members will be kept informed. Please continue furnishing us with evidence of these despicable acts. Attached is an example of such evidence (**Annexure G**). (Thank you Tertius Robertson).

**9. Pledges, Donations and Subscriptions:**

We thank all members who have complied with the above and kindly remind those who have not as yet to please do so. The account number is as follows:

**Account Name:** SANAPS

**Bank:** Nedbank

**Account Number:** 1001658892

**Branch Code:** 103610

Please forward proof of payment to attention: Mrs. Estelle Carelse at either fax: (021) 903 3085 or e- mail: [ecarelse@mweb.co.za](mailto:ecarelse@mweb.co.za).

**10. Ad hoc appointments and strict adherence to jurisdictions:**

There is still some confusion regarding the new ad hoc appointment procedures. The appointment is no longer in the hands of the SABFS. The clerk of the court or registrar, as the case may be, will appoint on request. However we have asked the DOJCD and the SABFS to kindly request the clerk or registrar to confirm with the appointee and the affected sheriff where there is any objection, as these appointments are made to avoid payment to the affected sheriff.

We have received a number of reports from colleagues who claim that neighbouring sheriffs are serving and executing illegally in their jurisdictions. We kindly wish to bring to the attention of colleagues the case of **Barclays National Bank v Wentzel 1978 (3) SA 976 (O)** in which it was held that where a summons is served outside a sheriff's jurisdiction, such service is not legally valid. It follows that all service and execution thereafter is illegal and the sheriff doing so will be held liable for damages. Colleagues please note that the few extra rands that you are earning in this manner from your neighbour is simply not worth it.

**11. Sheriffs demanding deposit and upfront payments:**

We attach herewith **Annexure H**. The Board intends to take this matter up on our behalf. It is also ironic that the rules of the Small Claims Court Rule (4)(1) and (2), created to assist the financially vulnerable, allows a sheriff to collect funds upfront yet we are not allowed this same right, in other matters, against attorneys and the public in general where no financial vulnerability is present. We are awaiting a response from the relevant law societies.

There is, of course, a reason why we ask for upfront deposits. Please refer to **Annexure I** in the matter between **Dikotsi J Thateng t/a Sheriff of Witsieshoek v Balden Vogel & Vennote Inc. Attorneys and Maluti- A-Phofung Local Municipality Case No: 5508/2015 High Court Free State Bloemfontein** (unreported) to see the length that attorneys would go to simply to avoid payment.

We thank and congratulate our colleague Mr. Thateng in taking this strong stance.

**12. Notice to “rogue sheriffs”:**

We attach **Annexure J** the content of which is self- explanatory. We have highlighted and cautioned members and the SABFS on the case law referred to and against this danger in our **previous report 1 of 2016 dated (06 April 2016)** and regret that despite this, sheriffs may now find themselves in difficulties should the allegations be found to be true.

It is regrettable that sheriffs find themselves in this difficulty and tragic for the profession as a whole as it is common practice for any insurer to increase premiums and excess where the risk it faces also increases.

**13. PIE Act:**

We attach herewith an interesting article drawn up by attorneys Joubert Scholtz the contents of which is self- explanatory. (**Annexure K**)

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

❖ *Q. What should colleagues do when the attached goods belong to a deceased and the estate has not as yet been reported?*

A. It is suggested that sheriffs encourage the claimants to report the estate, failing which the sheriffs are to proceed with the execution.

We cannot act against a deceased and unreported state. Sheriff should insist that the Master be informed of the deceased estate and take instruction from the Master/ Executor. Such writ should be returned with a copy of the death certificate [if available] to the instructing attorney.

❖ *Q. At which point in the auction can the sale in execution be cancelled?*

In **Lukas Martinus De Wet and Alta De Wet v The Sheriff, High Court, Cullinan Case Number: 29378/2014 North Gauteng High Court unreported (Annexure L)** it was held that the auction can be cancelled at any time **prior** to any opening bid. So where the sheriff was busy reading out the conditions, the sale could have been cancelled at this point. It must proceed once there is an opening bid.



❖ *Q. In a rent interdict summons, can you attach against the surety who is cited as the second defendant and whose address is given at another domicilium?*

A. We respectfully submit that the interdict operates specifically against the first defendant (the lessee) where an attachment must be made and not against the surety where a separate warrant is required for the purposes of attachment. Judgement needs to be taken against the surety, and that warrant will authorise the attachment against the surety.

❖ *Q. Can a sheriff furnish a Nulla bona return under the following circumstances? The defendant has left the country. There are no assets at his last given address which happens to be a domicilium. There is no one in charge to point out any further assets.*

A. No, a Nulla bona can ONLY be rendered by the sheriff if the defendant personally declares such, and thereby commits an act of insolvency. It is suggested that the sheriff make a return that declares as follows:  
“Neither the defendant nor any moveable assets belonging to the defendant could be found at the domicilium address of the defendant”.

The creditor can, on the strength of this return, apply to court to have the fixed property declared executable.

❖ *Q. In the magistrate's court, can an attorney acting for the execution creditor, unilaterally cancel an immovable sale (i.e. after the property has already been sold) and instruct the sheriff to furnish a new date?*

A. The attorney cannot do so. Like the High Court Rule he needs to apply in the Magistrate Court for the cancellation [Rule 43 (13) (B)].

❖ *Q. In a movable sale, who should pay the commission?*

A. The commission should be deducted from the proceeds of the sale. Unlike immovable commissions, these commissions should not be paid by the purchaser.

**15. Ramadhan Wishes:**

We wish all our Muslim members well over the holy month of Ramadhan.

**16. World Sheriffs Day:**

This will be celebrated on the 09 June 2016. Kindly refer to **(Annexure M)**. Please furnish us with any photographs regarding the celebration.

**17. Contributions to SANAPS Reports:**

We thank all those who have contributed to this report and welcome any further contributions, comments and suggestions that will keep the profession informed on their day to day activities. Please forward these to the Secretariat. All comments will be dealt with in the strictest of confidence.

Is there anything else we may be of assistance? Please do not hesitate to contact us:

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**We kindly suggest that you print out a hard copy of this report and file for future reference.**