



SHERIFFS INTRODUCTORY COURSE

ADDRESS BY A BOARD MEMBER

5 November 2012

Good morning and welcome to:
Regional Head for Justice –
Chairperson of the PAC –
Other dignitaries –

A special and very warm welcome to all the newly appointed Sheriffs, especially those that enter the sheriffing sector for the first time. We are very happy to have you join the law enforcement environment and trust that you will be a benefit to the civil justice cluster.

Let me start by discussing the Constitution of South Africa.

Every state institution and every person in South Africa is subject to the Constitution. Section 2 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996) states:

'This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.'

This means, among other things, that Sheriffs must comply with the Bill of Rights in the execution of their duties and that their employment practices must comply with the Constitution and its demand for equity.

On 31 August the Minister, acting in terms of Section 2(1) of the Sheriffs Act (90 of 1986), filled **127 vacant posts of Sheriff**.

These appointments represent a major advance in the transformation of a profession that for long represented one of the most untransformed aspects of our justice system.

Before these appointments the lack of representivity of the sheriffs profession truly induced a sense of shock. Out of the total of 234 sheriffs 167 (71,36%) were white, 44 (18,8%) African, 12 (5,12%) Indian and 11 (4,7%) coloured. The gender composition of the profession was even more shocking with 196 (83,76%) men and a mere 38 (16,23%) women.

Of the 127 newly appointed sheriffs 64 (50,3%) are African, 44 (34,6%) are white, 12 (9,44%) are coloured and 7 (5,51%) are Indian. Women represent 40 (31,49%) of the new appointees and men 87 (68,50%). Whilst there is still a long way to go, your appointment have gone a substantial way to making the profession more representative, in line with the transformative vision and goals of our Constitution.

All candidates who were appointed by the Minister were appointed from lists of fit and proper persons supplied by the Advisory Committees established in each province in terms of the Sheriffs Act.

Advisory Committees are entrusted by the Sheriffs Act to shortlist and interview candidates and thereafter submit a list of fit and proper candidates for consideration and appointment by the Minister.

Advisory Committees are chaired by a Magistrate and consist of five persons: the magistrate who heads the court where the vacancy occurs, an attorney nominated by the law society, a sheriff who is not a member of the Board of Sheriffs and the regional head of the Department of Justice and Constitutional Development.

The Minister may only appoint from such a list, and all persons were appointed from lists of persons submitted by the relevant Committees.

The Minister did not participate in the interview process and it was the responsibility of an Advisory Committee to establish the fitness for holding office of candidates before it places them on the list.

The prescribed process does not require of Advisory Committees to rank candidates in a numerical order of preference but to submit a list of preferred and most preferred candidates and a substantiated report in respect of each candidate on the list. The position that a given candidate occupied on a list is therefore not necessarily relevant.

On 14 September Minister Radebe announced the appointment of sheriffs in the Government Gazette. It has come to our attention some of the appointees have court judgments against them, some has a outstanding default amounts against them and some has default judgments .

The advisory committees found all the appointed persons to be fit and proper to hold office. The committees were not necessarily aware of judgments against candidates. The Sheriffs Act does not list a judgment for civil debt as a disqualification for holding office of a sheriff.

However, it is important to point out that in terms of Section 30 of the Sheriffs Act no person shall perform any functions assigned to a sheriff by or under any law unless, amongst others, the sheriff is the holder of a Fidelity Fund Certificate.

It is also important to point out that the process of appointment of sheriffs is entirely distinct and separate from the process of issuing a fidelity fund certificate.

A fidelity fund certificate is issued by the Board of Sheriffs after a person has been appointed by the Minister. Each and every application for a fidelity fund certificate is evaluated on its own merits.

The credit status of various CANDIDATES was obtained by the Board of Sheriffs in the course doing the necessary background checks before issuing them with fidelity fund certificates.

Should any of the APPOINTED persons be refused fidelity fund certificates they will not be eligible to perform the duties of Sheriff and their appointments will have to be revoked.

Fidelity Fund Certificates are issued by the South African Board for Sheriff in terms Sections 30-33 of the Sheriffs Act not by the Minister.

The Minister also does not consult with the Chairperson of the Board for Sheriffs before making appointments. Section 2(1) of the Sheriffs Act provides that the Minister may appoint a person as a Sheriff in the prescribed manner. The prescribed manner does not include consultation with the Chairperson of the Board of Sheriffs. This is an executive

decision that the Minister takes after considering the report of the relevant Advisory Committee.

Minister Radebe appointed a new SA Board of Sheriffs on 1 March 2012. Furthermore, it needs to be pointed out that sheriffs are not employees of the Board of Sheriffs but the holders of independent offices whose activities are regulated by the board.

The Board

The South African Board for Sheriffs is a regulatory statutory body appointed by the Minister for Justice and Constitutional Development, in terms of section 7 of the Sheriffs Act 90 of 1986 and it has, as its objects, the maintenance of the esteem of, the enhancement of the status of, and the improvement of the standard of training and functions performed by sheriffs. It also plays an indirect role in the appointment of sheriffs through its control over the issuing of fidelity fund certificates, without which a person is not entitled to function as a sheriff.

The Board has established sub-committees to advise it in respect of its regulatory function. They are:

- Fidelity Fund,
- Legal and Compliance,
- Standing Disciplinary,
- Liaison and Appointments,
- Finance, HR and IT,
- Consultative Forum and
- Training and Communication Committee.

I wish to share some of the functions of two or three committees to give you an idea as to the operations of the Board.

FIDELITY FUND

The Fidelity Fund is established in terms of Section 26 of the Sheriffs Act and its primary function is to be used as a source of revenue to compensate those who have suffered any prejudice as a result of misconduct or omissions by a sheriff.

The monies accrued in the Fund are housed in various investments, the capital is guaranteed with interest reinvested into the Fund. Historically the administration of the Fund was the responsibility of the Legal Committee however, the Board has decided to create a separate committee to attend to the administration of the Fund considering its importance.

The Fidelity Fund Committee is tasked with ensuring that the Fund is:

- Administered efficiently and effectively
- Always on a sound financial state to meet its obligations
- Responsive and accountable.

STANDING DISCIPLINARY COMMITTEE

Following the recommendation of the Legal and Compliance Committee the Board resolved that a Standing Disciplinary Committee be formed in terms of Section 18 of the Sheriffs Act to deal with sheriffs' misconduct.

CONSULTATIVE FORUM

Another important development has been the establishment of a Consultative Forum comprising members of the Board, the Department of Justice and both voluntary sheriffs' organisations.

I would like to share some of the functions of the Board with you as described in our Core Business.

The core business of the South African Board for Sheriffs is:

- To transform the Sheriffs' Profession, the South African Board for Sheriffs and its staff, and to bring it in line with Constitutional imperatives;
- To review all relevant legislation, among others the Sheriffs Act 90 of 1986, and if necessary lobby for reform in a manner that protects the interests of the Sheriffs' Profession and all stakeholders;
- To discipline sheriffs;
- To monitor the conduct of sheriffs;
- To promote professionalism;
- To set standards for training of persons who are or intend participating in the Sheriffs' Profession;
- To set up necessary training programmes;

The Office of the Board

The Office is situated in Cape Town and performs as the secretariat to the Board. We have 23 employees. The duties of the office is divided into 4 areas of importance. The divisions are;

- Executive Managers office,
- Legal and Compliance,
- Finance, HR and IT and
- Training and Communication.

The Executive Manager, Hoosain Kagee, is supported by 4 managers who each in turn head a division. You are most welcome to call our Office should you are in need of assistance in any way.

Department of Justice and Constitutional Development

By now you will know that the Minister for Justice and Constitutional Development appoints all Sheriffs and Acting Sheriffs as well as the Board members and the Chairperson of the South African Board for Sheriffs.

We have a very open relationship with the Department and the Ministry and will support every effort to ensure an effective, professional and transformed service is delivered to all of our stakeholders especially the public.

Introduction to the Associations

There are 2 voluntary Sheriffs' Associations, namely the South African Sheriffs Society (SASS) and the South African National Association for Progressive Sheriffs (SANAPS).

You are encouraged to join an association that would provide you with the best support.

Justice College

The Justice College is a division of the Department of Justice and Constitutional Development. It is an accredited training service provider and has therefore partnered with us to deliver the Sheriffs Introductory Course. They are situated in Pretoria.

SASSETA

The South African Safety and Security Sector and Training Authority, SASSETA, has been very instrumental in the development of skills within the sheriffing sector by funding various training initiatives undertaken by the Board over the past five years.

We are thankful to the SASSETA and its Board for supporting us and enabling us to realize our vision in respect of training.

SIC resource material

Although not all of you will attend the Sheriffs Introductory Course, we thought it prudent to provide each person with the course material. We hope that you will use the Learner Guide as a source of information and that you would share the information with your staff.

Sheriffs Guide

We have distributed a "Guide to starting a Sheriffs Office" these past few weeks and trust that the information published has assisted you to date. If you require additional copies, please speak to our officials and they will gladly assist you.

Various Acts

You will find a bound copy of various Acts in the bag we have provided for you. The Acts included are the Sheriffs Act and Regulations, Magistrates Court Act and the Supreme Court Act. Do note that the duties of the Sheriff goes beyond these Acts and you should familiarize yourself with all other Acts pertaining to the functions of the Sheriff.

List of Mentors

A list of our Mentors have been posted to you to ensure that you have the support you may require during the initial stages of your appointment. Do remember that our Mentors are not remunerated for their time and effort and they should be recognized and applauded for their commitment to the sheriffing sector.

Legal Obligations

You will have noticed that a large amount of forms need to be completed in order for you to apply for a Fidelity Fund Certificate each year. Please note that you must attend to these Legal Obligations within the timeframes specified to avoid being fined. The Board will not issue you with your certificate unless you have fully complied. Our staff at the Office of the Board will be most willing to assist you if you require assistance with the completion of forms.

Website

We are very proud of the fact that we could launch a new website in time for the new appointments and would like to encourage you to use the website to your benefit.

All of the Legal Obligation forms are posted on the site, ready to be downloaded or printed along with an array of other resource material including the Sheriffs Guide or Annual Report.

We have the JUTA Law library – JUTA Stat – available to you as an added benefit so that you may view the Jones and Buckle law reports.

Also please note that we have an Auctioneering function available to you to ensure that you increase the amount of bidders you may attract to your Sales in Execution.

Conclusion

In conclusion I wish to extend the Boards congratulations to you all and trust that you will embrace all the challenges that you may experience, knowing that we are there to support you.

THANK YOU