ADDRESS BY DEPUTY MINISTER ANDRIES NEL, MP, ON THE OCCASION OF THE INDUCTION TRAINING PROGRAMME FOR NEWLY APPOINTED SHERIFFS: MONDAY 5 NOVEMBER 2012: VENUE: PREMIER PRETORIA HOTEL, PRETORIA

Programme Director, Mr Thaka Seboka
Ms Charmaine Mabuza, Chairperson of the SA Board for Sheriffs
Chief Magistrates
Representatives from Sheriff Organizations
Sheriffs and Deputy Sheriffs
Newly appointed sheriffs
Ladies and gentlemen

Sawubona! Dumelang! Kgotsong! Ndi macheloni!, Molweni!, Goeie Môre!, Good Morning!

It is indeed a pleasure for me to be with you today on this significant/momentous occasion in the sheriff's profession as the newly appointed sheriffs commence with their induction training programme. I bring with me the best wishes of Minister Jeff Radebe.

Whilst the training program for the sheriffs from Gauteng, the North West and Limpopo is taking place in Pretoria from 5 to 9 November 2012, induction training programmes are simultaneously taking place during this period in Bloemfontein for the sheriffs from Free State and the Northern Cape; in Durban for the sheriffs from Kwazulu- Natal and Mpumalanga; in East London for the sheriffs from the Eastern Cape; and in Cape Town for the sheriffs from the Western Cape.

I wish to extend Government and the DOJCD's appreciation to the SABFS and its staff, lecturers from Justice College, lectures from various academic institutions in the Eastern Cape, as well the pool sheriffs that have made time available to share their experience and expertise with the new appointees over the next week. A large number of experienced sheriffs have also expressed their

willingness to serve as mentors. This augurs well as we enter into a new era for the sheriff's profession.

As I have mentioned, today marks a significant day in the sheriff's profession. On 31 August 2012, the Minister Radebe, acting in terms of Section 2(1) of the Sheriffs Act of 1986 (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. The last permanent appointments of sheriff were made in 2004/5, where after a 'moratorium' was placed on any further appointments until such time an audit of the profession has been completed; service areas have been revisited and various legislative amendments have been effected. This was important as it was clear that, although the Minister appoints sheriffs, the DOJCD had very little information regarding, amongst others, the number of documents processed by the more than 400 offices of sheriff, the income generated, the staff complement, the challenges experienced by the sheriffs and their deputies, as well as that of the attorneys, the court officials and the public.

Before these appointments the lack of representivity of the sheriff's 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%).

During the apartheid dispensation, appointments to the large and financially lucrative offices of sheriffs were exclusively the domain of white males. The recent appointments have not only addressed this past discriminatory practice but also doubled the number of women appointed as sheriffs. Whilst there is still a long way to go the appointments have gone a substantial way to making the profession more representative, in line with the transformative vision and goals of our Constitution.

I am pleased to announce that all outstanding vacancies that are not the subject of an investigation into the division of the service area (for example Krugersdorp) will be advertised during November 2012. There are currently just over 100 offices of sheriff that are vacant and serviced by acting sheriff. The DOJCD will be pro-active in that all offices of sheriff that become vacant in 2013 are included in the advertisement. This will ensure a smooth, efficient and effective handover over to take place in terms of the statutory obligations, including the outstanding documents to be disposed of, the immovable and movable property in possession of the outgoing sheriffs, and the residue in trust accounts or unclaimed trust monies. Furthermore, it will do away with the past practice of appointing a person as an acting sheriff for a long period until such time as a successor is appointed.

In terms of the Amendments of the Regulations Relating to Sheriffs, 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 now constituted at provincial level to ensure a uniform approach in the interviewing process. In the past, each and every district where the vacancy occurred constituted its own Advisory Committees and applicants from the district who are known to the members of Advisory Committees where most often preferred. This takes place to the detriment of applicants from outside the district who are very often better qualified, with more experience and most suitable for appointment.

The Advisory Committee consists of five persons, namely, a Chairperson who shall be an appropriately experienced magistrate appointed by the Minister, 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 DOJCD or if he/she is not available, a fit and proper person designated by him/her. The Minister does not participate in the interview process and it is the responsibility of an Advisory Committee to establish the fitness for holding office of candidates before it places them on the list.

The appointment of a fit and proper person by the Minister is the first of a two pronged process as the appointment of a fit and proper person is subject to the issuing of a fidelity fund certificate by the SABFS. 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. After an applicant has been appointed by the Minister he/she must approach the SABFS for the issuing of a fidelity fund certificate. It would appear from the recent round of appointments that the Advisory Committees will have to seek the assistance from the SABFS after they have compiled the list of applicants shortlisted for interviews, to ensure that they have all the necessary information that may impact on or influence their recommendation of fit and proper persons to the Minister.

So what is a Sheriff and where does the word come from?

I came across the following entry on the website of a sheriff's office in the United States:

"More than twelve hundred years ago, the country we now call England was inhabited by small groups of Anglo-Saxons who lived in rural communities called *tuns*. (*Tun* is the source of the modern English word town.) Each *tun* was divided into groups of ten families, called *tithings*. The elected leader of each *tithing* was called a *tithingman*. The *tithings* were also arranged in tens. Each group of ten tithings (or a hundred families) elected its own chief. The Anglo-Saxon word for chief was *gerefa*, which later became shortened to *reeve*.

During the next two centuries, a number of changes occurred in this system of tithings and hundreds. A new unit of government, the *shire*, was formed when groups of hundreds banded together. The *shire* was the forerunner of the modern county. Just as each hundred was led by a *reeve* (chief), each *shire* had a *reeve* as well. To distinguish the leader of a *shire* from the leader of a mere hundred, the more powerful official became known as a *shire-reeve*. The word *shire-reeve* eventually became the modern English word sheriff. The sheriff -- in early England, and metaphorically, in present-day America -- is the keeper, or chief, of the county."

So now you know what you are! But, seriously, in South Africa the office of sheriff has evolved into something very different to what is described above.

The office of the sheriff is sui generis in that:

- the sheriff is appointed by the Minister who may also suspend or remove a sheriff from office should circumstances so require in the interest of the maintenance of an effective and reliable service to the courts and the public;
- · the sheriff is an officer of the court;
- the sheriff generates his/her own income in terms of the prescribed tariffs approved by the Minister after the recommendation of the Rules Board for Courts of Law;
- the sheriff is prohibited from performing any functions of a sheriff unless he/she is in possession of a fidelity fund certificate;
- the sheriff must have a trust account;
- the sheriff is subject to misconduct proceedings instituted by the SABFS;
- the sheriff may only appoint a deputy sheriff with the approval of the SABFS;
- the sheriff has an employer/employee relationship with his/her deputy sheriffs and other staff; and
- the sheriff has sole competence in the execution of civil judgments.

This places a huge responsibility and commitment on each and every office of sheriff, no matter how big or small as the sheriff is the only person that can give effect to a court order for the execution of property, whether movable or immovable. The newly appointed sheriff should not be oblivious to the history of the sheriff's profession. In this regard I would like to refer to Minister Radebe's address at the inauguration of the South African Sheriff's Society on 23 June 2012, and I quote:

'It is the values embodied in our Constitution that at a very early stage of our constitutional democracy defined and impacted significantly on the role of the Sheriff. It was not so long ago that sheriffs had the power to arrest and imprison people, very often the poorest of the poor that were unemployed and on receiving end of inequality, simply because they did not have the means to settle a civil debt.

The Constitutional Court, in the matter of Coetzee v the Government of the Republic of South Africa and Matiso and others v Commanding

Officer, Port Elizabeth Prison and Others, 1995 (10) BCLR 1382(CC), decided that the relevant provision of the Magistrate's Court Act of 32 of 1944, was inconsistent with the fundamental right to freedom and security as guaranteed by section 11(1) of the Constitution and that the means adopted to achieve the goal were not reasonable. The Constitutional Court referred to 7 distinct features of the provisions of the Magistrate's Court Act that made it indefensible, including that the civil judgment debtor was, in a sense, treated more harshly than a criminal who was entitled to a fair trial with procedural safeguards. Judgement debtors, however, were obliged to fend for themselves and the procedure made no provision for recourse by the debtor to higher authority once a committal order has been made...

The Minister continues

'I refer to this matter as we very often seem to forget or wish away the history of our apartheid past. It is an important that sheriffs, and indeed all of us, are alive to our history in order to move forward in a meaningful way. For example, a person who was arrested many years ago by a sheriff and imprisoned for civil debt, or a child whose father or mother was arrested by a sheriff and imprisonment for civil debt simply because they could not afford to settle a clothing or grocery account, will have certain views or perceptions of the sheriff and the profession as a whole. It is therefore important that the sheriffs and their deputies are mindful of and sensitive to the environment in which they execute their duties.'

Closed quote

It may well be that one or more of the newly appointed sheriffs, or your family or relatives also experienced imprisonment for civil debt. I can only but repeat Minister Radebe's appeal to all sheriff, including their deputies and other staff members, to execute their duties mindful of and sensitive to the environment, and with respect, dignity, compassion and diligence and without fear or favour.

To underscore the above point I would like to read from the following brochure compiled by the Board of Sheriffs and distributed by the Department of Justice unpacks some of the common myths about sheriffs and explains exactly who the sheriff is and what powers they have.

Myth: Sheriffs are the bearers of bad news who should be avoided at all costs.

Fact: Sheriffs are unbiased officials of the court responsible for the serving of all court documents including summonses, notices, warrants, orders and execution of judgements and orders. A sheriff is the public face of the civil justice system.

Myth: Sheriffs can break your door down, damage your property and abuse you.

Fact: The South African Board for Sheriffs monitors the service provided by sheriffs and their deputies ensuring it is executed in a humane manner in terms of the Code of Conduct for Sheriffs. If anyone feels a sheriff has not acted fairly, they are encouraged to report the incident to the CEO of the Board.

Myth: Once a sheriff arrives at your door there is nothing you can do to fix the situation.

Fact: On arrival, sheriffs will explain the contents of the document they are serving and what you need to do next. They are there to help explain the legal process but cannot give you legal advice.

Myth: There is no way of knowing if the person at your door is a genuine sheriff or a debt collector.

Fact: Every sheriff and deputy sheriff must be able to produce a valid identification card issued by the South Africa Board for Sheriffs.

Myth: Sheriffs only represent big business. They are not there for the ordinary man in the street.

Fact: It is the duty of sheriffs to serve all people, rich and poor, with empathy and dignity at all times.

Myth: Sheriffs are self-appointed and do as they please.

Fact: Sheriffs are appointed by the Minister for Justice and Constitutional Development and act under rules of, and orders from, the Court.

Myth: Sheriffs should be chased away with stones and any documents served can be ignored or thrown away.

Fact: If you interfere with a sheriff performing their duty or do not follow instructions given to you by the sheriff, you may be liable for prosecution.

Myth: The sheriff can do nothing, if you refuse to cooperate.

Fact: In terms of the law, a sheriff can enter your premises and open your house, even when you are not there. They can attach remove and sell your vehicle, furniture and other moveable property, or if necessary our immoveable property to recover your debt.

Myth: Sheriffs can take anything they want from your home.

Fact: Sheriffs must explain the contents of the document they are serving and may not attached and remove necessary items such as food and beds, bedding and clothes. Furthermore, they may not, subject to certain guidelines, remove all your tools that you may rely on to earn a living.

Myth: Sheriffs can demand money and don't have to issue a receipt.

Fact: Sheriffs are supposed to issue receipts for any monies paid and to make sure both the original and copies of documents are marked with any payment made and acknowledged with your signature or mark. You are entitled to keep a copy of the original document.

I think the very fact that it was necessary to compile such a pamphlet should indicate to you, prospective sheriffs, that you will face perceptual challenges.

The question of access to justice is part and parcel of and central to the realisation of the Bill of Rights embodied in the Constitution of the Republic of

South Africa of 1996, that enshrines the right of all people in our country and affirms the democratic values of human dignity, equality and freedom. In as much as the success of the office of a sheriff is based on sound business principles and systems, the sheriff is constitutionally bound to adhere to and give effect to the Bill of Rights in the execution of their duties. In this regard is an imperative for the sheriff to carefully scrutinize each and every court document no matter from where it emanates to ensure that it adheres to and complies with the law and the prescribed forms. The sheriff's role is much more than that of a so called 'messenger' whose only responsibility is to deliver a document. words, the role of the sheriff is inquisitorial and where a court document is noncompliant it should be probed and returned to the court or the attorney, together with reason therefore. In the same vein, the sheriff must be diligent and inquisitorial in ensuring that he/she has done everything possible with the ambit of the law in locating the properties or possessions of the judgment debtor. The contents of the summons, judgement or execution order should be explained to the judgment debtor or the person on whom it is served, together with his/her responsibilities and rights. Attempted services should be kept to the minimum and sheriffs should be empowered to perform tracing services. I would appreciate comments from the sheriff's profession regarding amendments to the rules of courts of law to address this matter.

Access to justice remains a serious challenge for successful plaintiffs in small claims court proceedings where the judgement debtor does not comply with the court order. The sheriff will require security, sometimes in circumstances where it is not necessary, before executing the warrant to the detriment of the judgment creditor that does not have the financial means. Such an approach negates the purpose of institution a claim in the Small Claims Court. The Minister has requested recommendations from the sheriff's profession to unblock this constraint.

Before I conclude, I am pleased to inform you that the Sheriffs Amendment Bill, 2012, has been approved by the National Assembly and recommend for approval by the Select Committee on Security and Constitutional Development to the National Council of Provinces. Key features of the Sheriffs' Amendment Bill include the following:

- to provide for the regulation of acting appointment in cases of vacancies.
- to provide for the Minister to designate state employees to serve court processes in areas where there is no sheriff.
- to amend the object clause to provide for creation of opportunities to advance the transformation of the sheriffs profession.
- To strengthen he governance framework of the SABFS to enhance accountability arrangements relating to the management of the Fidelity Fund.
- To reconstitute the Board.

In Conclusion, I would like to make use of the opportunity to congratulate the sheriffs in all of the provinces on your appointment. I wish you the best of success not only in your induction and other training programmes that will follow, but also to the sheriff's profession. On behalf of the Minister and the DOJCD I welcome you as a key role player in the Justice Family.

I thank you.