

Siyazanazisa

February 2016 | quarterly newsletter

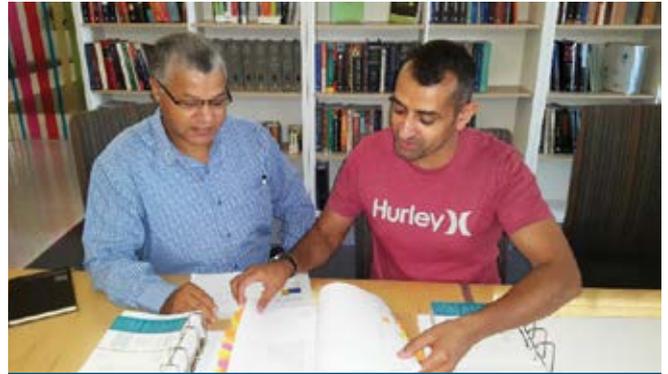
FIRST REVISION BRINGS THE SHERIFF'S GUIDE UP TO DATE

The First Revision Service of the South African Sheriff's Guide: Practice and Procedure has been completed. The Original Service contained the law up to 31 August 2015 and the First Revision Service contains the law up to 30 November 2016.

The First Revision Service was handed over to JUTA for final publication at a meeting with JUTA on 8 February 2016, and in the presence of Mr Vincent Nel. All editorial work has now been completed.

The First Revision Service includes:

- a. Updates to chapters 1-5 of the original service by incorporating the 2015 amendments to the Sheriffs Act 90 of 1986 and the regulations thereto, as amended.
- b. Introduces four new chapters:
 - Chapter 10: Execution Proceedings in terms of the State Liability Act 20 of 1957;
 - Chapter 11: Insolvency;
 - Chapter 12: Small Claims Courts; and
 - Chapter 13: Costs.
- Four new precedents originating from the State Liability Act have been attached to Annexure 2.



Edmund Beerwinkel from Juta, the Publishers of the Sheriffs Guide and Professor Mohamed Paleker.



L-R: Edmund Beerwinkel, Stephen Allcock, Prof. Mohamed Paleker and Mark McClellan, the editor.

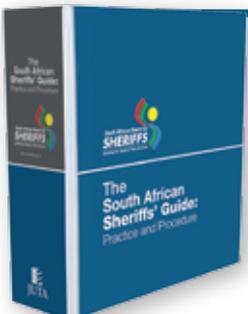
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Order Your Guide Today

Care has been taken to ensure that it is an easy to access and easy to understand reference guide and that the layout and writing style is geared to the modern reader. Aside from its discussions on substantive and adjectival law, the Guide binds the Sheriffs' profession to the constitutional value system, good practices and ethics – principles that are critical to the South African Board for Sheriffs.

This loose-leafed, 704-page Guide, complete with sturdy binder, sells for R695, plus courier delivery at a cost of R65 = R760.

Contact Juta Law Business Consultants, Sales Manager, Grace Kironde on
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The Guide, previously known as the Sheriffs' Handbook.

In this issue

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- Welcoming New Sheriffs and Educating Learners
- Legal Aid SA signs a Memorandum of Understanding with the Sheriffs Profession
- Requirements for Opening a Trust and Business Account
- New Sexual Offences Court and Thuthuzela Care Centre Launch Draws Crowds
- In-service Training: Building the Capability of Staff

In addition, the Sheriffs Act 90 of 1986 and the Regulations thereto have been updated in Annexure 1 and The State Liability Act 20 of 1957 has also been appended to Annexure. A table of abbreviations has been attached to the preliminary pages, the contents pages have been revised, and the index has been revisited.

With regards to the four new chapters, each of them has been thoroughly researched, as is evident from the abundant reference sources. They have also been deliberated upon and approved by the Reference Group. It has to be noted that Chapter 13, for example, has over 900 footnotes alone – an indication of the level of care that was taken to verify information. The other chapters, too, have been extensively referenced.

The original layout of the Guide has been maintained to ensure that there is symmetry between the Original Service and the First Revision Service. The current version of the



Stephen Allcock from Juta, the Publishers of the Sheriffs Guide, and Professor Mohamed Paleker, the Author of the Sheriffs Guide.

Guide should serve the profession and the market for at least 18 months before the next revision service needs to be introduced.

REPRESENTIVITY AND ECONOMIC VIABILITY

Keynote address by the Deputy Minister of Justice and Constitutional Development at the opening of the Sheriffs Introductory Course



The Hon. John Jeffery, MP, at the opening of the Sheriffs Introductory Course in Sunnyside, Pretoria, on 1 February 2016.

The Hon. John Jeffery, MP, after noting findings in a nationwide audit of the sheriffs’ profession, realised that the racial and gender composition needed drastic amendments. Here are excerpts of his keynote address.

“As we all know, sheriffs are an essential part of the justice system. Without a proper and professional sheriffs’ profession, our civil justice system simply cannot function.

This course is important in making newly appointed sheriffs and aspirant sheriffs aware of their responsibilities in the execution of their duties.

It is a constitutional imperative that the sheriffs, like all sectors of our society, must reflect the demographics of our country in respect of its racial and gender composition.

Last year, the South African Board for Sheriffs conducted a nationwide audit of the sheriffs’ profession. The outcome of the audit indicated that of the 288 sheriffs, 41% were white, while 39% were African and women comprised only 26% of all sheriffs.

In August last year, our Department advertised vacant sheriffs’ positions with a closing date of 1 September 2015. The Department worked hand-in-hand with the Board for Sheriffs and the legal profession who acted speedily to designate the sheriffs and attorneys who formed part of the Provincial Advisory Committees, chaired by a chief magistrate, so as to meet the strict deadlines set to fill the vacant posts.

Two important factors that I took into consideration in making the appointments were representivity – in particular the need to ensure more African and women sheriffs – as well as the economic viability of offices. Where it made more sense, from an economic viability point of view, offices serving both the lower courts and the High Court in a particular area, were joined.

I am pleased to announce that I have, on 13 January 2016, appointed 32 sheriffs to various vacant sheriff offices, 19 of the appointees are African (59%), 8 are White (25%), 4 are Coloured (13%) and 1 is Indian (3%). Women represented 41% (13) of the new appointees and men 59% (19).

Once these appointments take effect, of the 302 sheriffs, 121 are white (40%), 122 are African (40,3%), 22 are Indian (7,3%) and 37 are Coloured (12,2%).

Women now represent 27,5% (83) of the total sheriffs and men 72,5% (219). The Department is determined to close the gender gap in the sheriffs’ profession and, in so doing, further enhance the economic empowerment of women.”

For the full speech visit our website www.sheriffs.org.za

WELCOMING NEW SHERIFFS AND EDUCATING LEARNERS

Sheriffs Introductory Course 2016 Induction Day

The South African Board for Sheriffs (SABFS) hosted an induction day for the newly appointed Sheriffs on 1 February 2016.

The event was held in Pretoria at the offices of the Law Society of South Africa. The SABFS invited interested persons from the sheriffs and the legal fraternity to participate and attend the Sheriffs Introductory Course (SIC). A total of 31 learners participated.

The Deputy Minister of Justice and Constitutional Development, Mr John Jeffery, MP addressed the newly appointed sheriffs along with the SIC learners. The Chairperson of the Board Mrs Charmaine Mabuza, Ms Jenni Irish-Qhoboshoane from SASSETA and Dr Linda Meyer Justice College Head also addressed the new sheriffs and learners.

The complete list of names of the newly appointed sheriffs is available on our website.



L-R: Mrs S. Snell, Executive Manager of the SABFS and Mrs C. Mabuza, Chairperson of the SABFS.



Sheriffs Introductory Course 2016 Learners.



Sheriffs Introductory Course 2016 Learners.



L-R: Mr N. Swart, CEO of Lead SA; Dr L. Meyer, Head of Justice College; Ms J. Irish-Qhobosheane, Administrator of SASSETA; and Mrs C. Mabuza, Chairperson of SABFS.



LEGAL AID SA SIGNS A MEMORANDUM OF UNDERSTANDING WITH THE SHERIFFS PROFESSION

Legal Aid SA, the South African Sheriff Society, the South African National Association of Progressive Sheriffs, and the South African Board for Sheriffs, have signed an agreement to ensure that no indigent person is denied access to justice merely due to their inability to pay the costs associated with the serving court process.

The South African Board for Sheriffs will oversee the implementation of the agreement and play an important advisory role to the parties.

Sheriffs play an important role in delivering justice as they serve court process. In this capacity, the sheriffs profession contributes to the recognition of the rights of the clients of Legal Aid SA.

The key objective of the agreement is to promote the efficient service of court process, thus ensuring access to justice for the poor. This objective strengthens the public’s right to equal protection under the law and promotes and protects social justice and fundamental human rights.

This agreement is in line with Cabinet’s approval of terms of reference for the review of the civil justice system, which is aimed at reviewing the capacity of state and non-state agencies involved in the civil justice system, and to improve



L-R: Ms H. Hendricks (LASA), Mr T. Monare (LASA), Mrs C. Mabuza (SABFS), Mr P. Maluleke (SASS) and Mr A. Dawood (SANAPS).

and modernise systems and process, and to address the exorbitant cost of obtaining legal redress.

The agreement is in line with Legal Aid SA’s strategic plan of ensuring the implementation of the recommendations of the Civil Justice Review, in improving the functioning of the justice and legal sector by building stronger and effective partnerships with stakeholders.

The South African Board for sheriffs is committed to enhancing the dignity of those it serves and, as such, it will ensure that sheriffs only serve court process within their jurisdiction, take the necessary steps to ensure unreasonable delay in serving court process, and render their services in a fully accountable manner.

Payments to sheriffs by Legal Aid South Africa

Legal Aid South Africa has undertaken to use the invoice number on sheriffs’ returns of service as the payment reference when paying sheriffs. It is hoped that this will assist sheriffs in identifying their payments.

FREE AUCTIONS LISTING ON OUR WEBSITE

An exciting feature on our website allows sheriffs to advertise their auctions directly to the public for free. With only four easy steps to complete, you can create a new listing in under five minutes. It’s really simple – just follow the steps listed below:

1. Go to <http://www.sheriffs.org.za>.
2. Login with your username and password using the sheriff login button. If you don’t have a username and password, use the ‘Request Access’ link to register.
3. Once in your sheriff member’s area, click the ‘Auction Upload’ option in the sheriff menu on the right-hand side.
4. Fill in the fields on the ‘Auction Upload’ form. Your listing will now be added to the new auction area on our website.

Some tips

- Use the description field to give a detailed inventory, or description, of the auction.
- Include up to six images to increase your chances of drawing attention.

We encourage all sheriffs to utilise this function to promote their sales in execution. It’s quick, simple and absolutely free!





REQUIREMENTS FOR OPENING A TRUST AND BUSINESS ACCOUNT

The SABFS has indicated that a sheriff should keep two distinctive bookkeeping systems, namely trust and business accounts. The opening, running and reporting of these accounts are regulated by the Sheriffs Act. Section 22, in particular is the guiding section on the issue of the Trust Funds handled by sheriffs.

Accounts for Trust Moneys – Section 22 of the Act

1. Every sheriff shall open and keep a separate trust account, which shall contain a reference to this subsection, with a banking institution or building society, and shall forthwith deposit therein the moneys held or received by him on account of any person.
2.
 - a. A sheriff may invest in a separate savings or other interest-bearing account opened by him with a banking institution or building society any money deposited in his trust account and not immediately required for any particular purpose.
 - b. A savings or other interest-bearing account referred to in paragraph (a) shall contain a reference to this subsection.
3. The amount standing to the credit of an account opened by a sheriff in terms of subsection (1) or (2), shall not form part of the assets of that sheriff or, if he or she dies or becomes insolvent, of his or her deceased or insolvent estate.
4. Interest on money in an account mentioned in subsection (1) or (2) shall, unless the person on whose behalf the sheriff is holding or has received those moneys, in writing indicates otherwise, be paid in the prescribed manner to the Fund by the sheriff concerned: Provided that, before a sheriff

pays the interest to the Fund, he or she may deduct his or her expenses incurred in respect of his or her trust account from the interest accrued on the trust account in accordance with a tariff and procedure prescribed by the Board.

The interest earned in the trust account of the sheriff is paid over annually in the prescribed manner and is the funding source of the Fidelity Fund.

Establishment and control of Fidelity Fund for Sheriffs:

1. There is hereby established a fund to be known as the Fidelity Fund for Sheriffs, and into which shall be paid:
 - a. Interest paid to the Fund in terms of section 22 (4);
 - b. The prescribed contribution referred to in section 30 (1) (c) (ii) or 31 (2);
 - c. Interest derived from the investment of moneys in the Fund;
 - d. Moneys recovered on behalf of the Fund by virtue of the provisions of section 39;
 - e. Moneys mentioned in section 41 (2);
 - f. Moneys which may accrue to the Board from any other source.
2. The Fund shall be controlled and managed by the Board.
3.
 - a. Moneys forming part of the Fund shall, until spent or invested, be paid into and kept in an account opened with a banking institution or building society.
 - b. Such account shall be called the Fidelity Fund Account for Sheriffs.

SENTENCE OF IMPRISONMENT FOR MISAPPROPRIATING TRUST MONEY

Ms Sylvia Yon, the erstwhile sheriff for Khayelitsha HL, was sentenced in September 2015 to an effective three years in jail for misappropriating trust money. The Specialised Commercial Crimes Court of the Cape rejected Ms Yon's defence that she informed the Board for Sheriffs that she was experiencing financial difficulties and would have to use trust money for business purposes. The Court emphasised Section 22(3) of the Sheriffs Act, which, in summary, states that money held in a trust account shall not form part of the assets of the sheriff.

SHERIFF INTERDICTED FROM ACCESSING TRUST ACCOUNT

The Board for Sheriffs obtained an order on an urgent basis interdicting a sheriff from performing any transactions in respect of his trust account in the Bloemfontein High Court in January 2016. The Board's application was based on prima facie evidence of misappropriation as evidenced by transactions on the trust account bank statements of the sheriff. The High Court was satisfied that further access by the sheriff to the trust account posed a material risk to the public funds held in such an account. The sheriff has since been suspended by the Minister of Justice and Correctional Services.

NEW SEXUAL OFFENCES COURT AND THUTHUZELA CARE CENTRE LAUNCH DRAWS CROWDS

The South African Board for Sheriffs (SABFS) was invited to attend the opening of the New Sexual Offences Court and the launch of the Thuthuzela Care Centre in Atlantis late last year.

The response to the opening of the new court was overwhelming as the public was eager to be part of the event and to listen to the speeches that were delivered by the various dignitaries.

Our three staff members in attendance assisted the public by answering questions and explaining the role of the sheriff and that of the Board, as well as displaying our information pamphlets and newsletters at our exhibition table.

SABFS Executive Manager Mrs Sharon Snell was present at the opening and interacted with the dignitaries as well as some of the sheriffs who were present. We noted that the Sheriff of Atlantis Mr Basson and also Advocate Cetywayo, the sheriff for Bellville High Court, were present.



Members of the Atlantis community being addressed by dignitaries.



The SAPS band entertaining the audience.



L-R: Mrs S. Snell, Executive Manager of the SABFS; Mrs F. Mohamed of the SABFS, Mr M. Basson, Sheriff for Malmesbury.

IN-SERVICE TRAINING: BUILDING THE CAPABILITY OF STAFF

Educational sessions were held for the staff at the office of the Board towards the end of last year and at the beginning of this year, as part of the organisational development strategic plan.

This is also part of the objective of the SABFS to build the capability and continuous professional development of personnel. Three themes were covered, namely:

- Time and Stress Management;
- Needs-based Training (NBT); and
- Risk Management.

The aims of these training sessions are described below.

In the Time and Stress Management Course, personnel of the Board learned: to balance work and personal life through better time and stress management; techniques and strategies to increase productivity without working harder or longer; to focus on high pay-off activities; and to eliminate time wasters and overcome procrastination. Staff have been orientated to respond more efficiently to stressors and to use the principles of emotional intelligence to manage energy flows and demands on time.

The purpose of the NBT, similar to those held in the provinces, is to ensure that the staff of the SABFS will be competent to deal with matters relating to the civil litigation arena. Noting that legislation evolves constantly, the sessions inform staff about changes in regulations affecting civil litigation and



SABFS staff and sheriffs staff attending the SABFS in-service training.

ensure a better working relationship between the SABFS and stakeholders in the sector. Mr Van Greunen, an experienced sheriff from Goodwood, facilitated sessions with different divisions of the office of the Board.

The finance general manager of the Board, Mr Andrew Simon, facilitated the session on the importance and understanding of risk management in the organisation. He covered areas such as the benefits of risk management, risk identification, risk control, and reporting and mitigating potential risk in the organisation.

Potential areas of risk were identified such as the investment interest rate, the public suing the Board, cyber criminals hacking into banking details, theft of public trust moneys by sheriffs, and misappropriation by fund managers at the SABFS. The risk analysis and practice would prevent the reputational loss to the SABFS as a result of poor governance practices. This session revealed that the risk issue and the importance thereof has cascaded down from policy makers and management, to staff.



SABFS staff and sheriffs staff attending the SABFS in-service training.

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* Note that if the name of the area is two words please type it as one word eg. "Somerset West" type as "Somersetwest" and you will receive the name and contact numbers for the requested area via return sms.



If you have any queries, complaints or compliments please contact us.

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