

4 March 2022

Our Ref:

South African Board For Sheriffs

Circular 1 of 2022

TO: **ALL SHERIFFS**

VOLUNTARY ASSOCIATIONS: SOUTH AFRICAN SHERIFFS' SOCIETY

SOUTH AFRICAN NATIONAL ASSOCIATION OF PROGRESSIVE SHERIFFS

CC: **MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

**DIRECTOR GENERAL: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT ACTING DEPUTY**

DIRECTOR GENERAL: COURT SERVICES

**SOUTH AFRICAN BOARD FOR SHERIFFS CIRCULAR 1 OF 2022 IN RE : ACTING SHERIFFS
APPOINTMENTS MADE BY THE DEPUTY MINISTER ON 24 FEBRUARY 2022**

1. The purpose of this Circular is to address two issues, first, to clarify the misconception, confusion and rumours currently circulating within the profession, which have caused undue widespread panic and inundated telephone calls and correspondence from a small group of Sheriffs to SABFS officials and the Chairperson's office in respect of the Board's decision not to issue Fidelity Fund Certificates ("FFC") to retired Sheriffs; and permanent Sheriffs for reasons fully stated below; and second, to highlight the salient provisions of the Sheriffs Act ("Act") regarding the application for, issuing and cancellation of FFCs which are prescriptive to the Board and its officials in performing its functions envisaged in the Act.

Non-issuance of FFCs to retired Sheriffs or permanent Sheriffs

2. On 25 February 2022 the South African Board for Sheriffs ("SABFS") received correspondence from the Department of Justice and Constitutional Development ("DOJCD"), attaching letters of

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South African Board for Sheriffs - *Established Act 90 of 1986*
Adv M Morgan (Chairperson), Ms Z Nkosi, Mr I Burton, Mrs A Titus, Ms P Mlandu
Ms T Tshoedi, Mr S Maremane, Mrs S Mashaba, Mr A Shabalala, Mr K Mahlaba

appointment of the acting Sheriffs, the Deputy Minister, as delegated, had appointed in the 72 (seventy-two) vacant service areas on 24 February 2022.

3. Prior to the acting appointments being made, on 18 February 2022 the Deputy Minister's office addressed correspondence to the SABFS enquiring whether it was prepared to issue Fidelity Fund Certificates ("FFC") to each of the 40 (forty) Sheriffs (retired and permanent) considered for acting appointment in the vacant service areas. This was the consultation required in section 5 (1B) (a) of the Act.
4. After the above enquiry, the Chairperson of the SABFS informed the Deputy Minister of the Board's unanimous objection and formal stance on the issue of the continued appointment of retired Sheriffs in acting positions and permanent Sheriffs who have serious complaints and/ or disciplinary action pending against them before the SABFS.
5. In the correspondence transmitted to the Deputy Minister's office on 21, 23, and 25 February 2022, the SABFS stated its rationale for objecting to the listed individuals contemplated for acting appointment but also advised that it was willing to issue the retired Sheriffs and implicated permanent Sheriffs with FFCs for one month, in order to facilitate a proper handover process.
6. In short, the main reason for Board's decision to objecting to retired Sheriffs' appointment is that their appointment exposes the Fidelity Fund to direct and substantial risk because once a Sheriff has retired, he or she no longer falls under the SABFS's disciplinary jurisdiction, as the regulatory body for the profession.
7. This is an ongoing concern for the Board, as it is struggling with obtaining insurance for the Fidelity Fund, per section 29 of the Sheriff's Act. The Board was advised by a potential service provider that this was a fundamental reason that no prospective insurer is willing to insure the Fidelity Fund under the current circumstances.
8. Similarly, to the risk posed to the Fidelity Fund by the appointment of retired Sheriffs, permanent Sheriffs, who have complaints of a serious nature and/or disciplinary action pending before the SABFS, pose a direct and substantial risk against the Fidelity Fund. As a result, the Board has adopted the same approach when considering whether to issue an FFC to a permanent Sheriff contemplated for an acting and/or permanent appointment in a vacant service area. This position was understood and supported by the Deputy Minister when the Chairperson informed him of same prior to the appointments being made.

9. In taking the above decision, the Board acknowledged and appreciated that it has a fiduciary duty to the Fidelity Fund, the SABFS and the broader public to protect and always acting in their best interests.
10. Upon receipt of the appointment letters the Chairperson of the Board, subsequently addressed correspondence to the Deputy Minister's office requesting that the grave omission regarding the Board's decision, reason and rationale as stated above, not to issue FFCs to retired Sheriffs and certain permanent Sheriffs, be fully clarified and disclosed to the concerned persons.
11. **Lastly, I wish to reiterate to those concerned and the profession, that the complaints or disciplinary actions pending against retired Sheriffs in respect of the offices they were appointed to act in, was not a determinative factor to the Board's objection to them being issued with an FFC. The main reason as stated above, is simply because they are retired and the person's continued appointment poses a direct and substantial risk to the Fidelity Fund.**

Conditions to acting appointments made on 24 February 2022, per Deputy Minister's appointment letter

12. The appointment letter transmitted to the acting Sheriffs provides that:

*"Your appointment as acting sheriff is, in terms of section 5 (1B)(b) of the Sheriffs Act, **subject to the conditions:***

*That **you submit to the SABFS the application for a FFC on the prescribed Form together with the prescribed documents and fee, as well as a bank statement of the trust account for the last three months,** dating from 1 November 2021, to the date of the application being made. (My emphasis)*

Your attention is also drawn to Regulation 2F(4) read with Regulation 10 of the Regulations to the Sheriffs Act, in terms of which the acting sheriff, when his or her period of appointment is completed, is required to hand all court processes and other documents which were in his or her possession, to the Director-General of the Department of Justice and Constitutional Development (delegated to the Court Manager)."The SABFS communicated with all the appointed acting sheriffs regarding the prescribed forms and requirements for obtaining an updated Fidelity Fund Certificate for the new acting period as stipulated in the above-mentioned appointment letters.

13. The Board's understanding of the above is that the acting appointment is on condition that the appointed person submits an application to the SABFS for an FFC in the prescribed manner;

accompanied by the prescribed documents required by the Board and proof of payment of the prescribed fee.

- 13.1 The application form that the appointed person must submit to the SABFS for an FFC is depicted as Form 4 of Regulations in terms of the Sheriffs Act;
- 13.2 Accompanied by the annexure(s) to Form 4 (for deputy Sheriffs) and the prescribed documents and fee, namely:
- 11.2.1 a copy of the certificate of personal and third-party indemnity insurance from the broker referred to in Sections 30 (1)(b) for the minimum value and contingencies to be covered as prescribed by the Board;
 - 11.2.2 3 months bank statements of the trust account; and
 - 11.2.3 the prescribed fee is R575.00 per office and R345.00 per deputy Sheriff employed by the acting Sheriff.
14. It is the applicant's duty to make the application to the Board and ensure that the application submitted complies with the conditions as set out above.
15. Also, in the case of doubt, it is the applicant's duty to enquire and seek assistance from the Board on clarity in respect of submitting an application for an FFC. It is not the SABFS's duty to request from or remind the appointed person to submit the prescribed application and pay the prescribed contribution to the SABFS prior to being issued an FFC.

Salient provisions of the Act regarding the application, issuing and cancellation of an FFC

16. We wish to draw your attention to the salient provisions below.

“30 Prohibition of performance of functions of sheriff in certain circumstances

- (1) *A sheriff or his or her deputy shall not perform any functions assigned to a sheriff by or under any law unless-*
- ...
- (c) *in the case of an acting sheriff-*
- (i) *the acting sheriff is the holder of a fidelity fund certificate; or*
 - (ii) *the acting sheriff has paid the prescribed contribution to the Board.*
- (2) *The Board may prescribe, in connection with indemnity insurance referred to in subsection (1) (b), the minimum cover requirements to be complied with, the contingencies to be covered by such insurance and the circumstances under*

which a person who would otherwise be required to obtain such insurance, shall be exempted therefrom.

...

31 Applications for fidelity fund certificates

- (1) *A sheriff may apply on the prescribed form to the Board for a fidelity fund certificate.*
- (2) *An application referred to in subsection (1) shall be accompanied by the prescribed contribution.*
- (3) *A sheriff applying in terms of subsection (1) for a fidelity fund certificate shall furnish such additional particulars in connection with his application as the Board may require.*

32 Issue of fidelity fund certificates

- (1) *If the Board is satisfied, after consideration of an application referred to in section 31, that the sheriff is, having regard to the provisions of section 33, a suitable person to hold a fidelity fund certificate, the Board shall issue to him a fidelity fund certificate on the prescribed form.*

...

- (3) *Notwithstanding the provisions of subsection (2), the Board may at any time issue to an acting sheriff a fidelity fund certificate having a period of validity of not less than one month and not more than one year.*

33 Disqualifications relating to fidelity fund certificates

- (1) *Subject to the provisions of subsection (2), the Board shall not issue a fidelity fund certificate to a sheriff if he-*
 - (a) *is not a South African citizen permanently resident in the Republic;*
 - (b) *is not of or over the age of 21 years;*
 - (c) *is an unrehabilitated insolvent;*
 - (d) *is of unsound mind;*
 - (e) *does not comply with the prescribed standard of training;*
 - (f) *does not have the prescribed practical experience;*
 - (g) *has at any time been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;*
 - (h) *has at any time been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine;*

- (i) *has failed to comply with a provision of section 23 (1) (b) during a period of one year immediately prior to the date on which he applies for a fidelity fund certificate;*
 - (j) *has at any time been prohibited under section 24 (1) from dealing with an account mentioned in section 22 (1) or (2) in any manner;*
 - (k) *was previously the holder of a fidelity fund certificate which has been cancelled under section 34 (1) or 49;*
 - (l) *has at any time incurred liability towards the Board by virtue of the provisions of section 39, unless he has repaid the relevant amount in full to the Board or has made in the opinion of the Board satisfactory arrangements for the repayment of any such amount;*
 - (m) *has not obtained professional indemnity insurance to the satisfaction of the Board to cover any liability which he or she may incur in the course of the performance of his or her functions in terms of this Act.*
- (2) *If in respect of any sheriff who is subject to any disability mentioned in subsection (1), the Board is satisfied that, having regard to the relevant considerations, the issue of a fidelity fund certificate to him is justified in the interest of fairness towards him, the Board may, on such conditions as the Board may with the concurrence of the Minister determine, issue a fidelity fund certificate to him when he applies therefor.*

34 Cancellation of fidelity fund certificates

- (1) *Notwithstanding the provisions of Chapter IV, the Board may cancel a fidelity fund certificate issued to a sheriff after at least 14 days' notice in writing to the sheriff-*
- (a) *if the sheriff becomes subject to a disability mentioned in section 33 (1) (a), (c), (d), (g), (h), (j) or (l);*
 - (b) *if the sheriff contravenes or fails to comply with a condition imposed under section 33 (2); or*
 - (c) *if that fidelity fund certificate was issued on information subsequently proved to be false.*
- (2) *The Board shall cancel the fidelity fund certificate of a sheriff if it is requested by the sheriff to do so or if the sheriff ceases to hold office.*
- (3) *Any person who has in his possession or under his control any fidelity fund certificate cancelled under this section, shall return that certificate to the Board within 30 days after he became aware of the cancellation.”*

17. The above are salient provisions which guide and instruct us in determining whether or not to issue an FFC to an appointed applicant.
18. I trust that the above provides clarity to the profession.

End.

SOUTH AFRICAN BOARD FOR SHERIFFS