

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING**

No. R. 1293

5 December 2008

**SHERIFFS ACT, 1986 (ACT NO. 90 OF 1986): AMENDMENT OF
REGULATIONS RELATING TO SHERIFFS, 1990**

The Minister for Justice and Constitutional Development has, under section 62 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and after consultation with the South African Board for Sheriffs, made the regulations in the Schedule.

SCHEDULE

Definition

1. In this Schedule "the Regulations" means the Regulations relating to Sheriffs, 1990, published by Government Notice No. R. 411 of 12 March 1990, as amended by Government Notices Nos. R. 2207 of 14 September 1990, R. 3440 of 31 December 1992, R. 1836 of 1 October 1993, R. 1566 of 16 September 1994, R. 1218 of 11 August 1995, R. 1193 of 25 September 1998, R. 1668 of 18 December 1998, R. 256 of 1 March 1999 and R. 957 of 5 October 2001.

Amendment of Contents of Regulations

2. The Contents of the Regulations is hereby amended—
- (a) by the substitution for the expression "2 Appointment of sheriffs" of the following expressions:
- "2 Vacancy in office of sheriff
 - 2A Advertisement of vacancy
 - 2B Application for appointment as sheriff
 - 2C Advisory Committee
 - 2D Selection criteria, interviews and appointments
 - 2E Appointment of more than one sheriff for particular area
 - 2F Training of sheriffs"; and
- (b) by the deletion of the following expressions:
- "2 Statement of assets and liabilities
 - 3 Report by employer".

Amendment of regulation 1 of Regulations

3. Regulation 1 of the Regulations is hereby amended—
- (a) by the substitution for the definition of "Director-General of Justice" of the following definition:
- " **'Director-General'** means the Director-General: Justice and Constitutional Development and includes any person authorised by the Director-General to exercise any power conferred on the Director-General in the Regulations;"; and

- (b) the substitution for the definition of "gross income" of the following definition:

" **'gross income'** means—

- (a) the total amount, in cash or otherwise, received by or accrued to or in favour of a sheriff in terms of Part II of Table C of Annexure 2 by the rules promulgated under section 25 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), read with section 6(3) of the Rules Board for Courts Law Act, 1985 (Act No. 107 of 1985), and in terms of the tariff in rule 68 of the rules promulgated in terms of section 43 of the Supreme Court Act, 1959 (Act No. 59 of 1959), read with section 6(3) of the rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985); and
- (b) any other income derived in his or her capacity as sheriff in terms of any law or otherwise;"

Amendment of regulation 2 of Regulations

4. The following regulations are hereby substituted for regulation 2 of the Regulations:

"Vacancy in office of sheriff

2. (1) When a vacancy in the office of sheriff of a lower or superior court occurs or will occur, the court manager of the court where the

vacancy occurs or will occur must, within seven days of becoming aware of the vacancy or expected vacancy, notify the Director-General and the Board of the vacancy or expected vacancy.

(2) If a vacancy occurs or will occur in an area that extends into two or more magisterial districts, the court manager of the court in whose magisterial district the sheriff who vacated or will vacate the office conducts business, must notify the Director-General, the Board and any other court manager in whose magisterial district the sheriff concerned also conducts or conducted business of the vacancy or expected vacancy.

Advertisement of vacancy

2A. (1) The Director-General must advertise any vacancy in the office of sheriff as soon as is practicably—

- (a) in a newspaper that circulates throughout the country; and
- (b) by posting advertisements in as many of the official languages as is practicable on the notice boards at all the relevant court buildings.

(2) The advertisement referred to in subregulation (1) shall state—

- (a) the area or areas of jurisdiction of the lower or superior court in respect of which the vacancy occurs or will occur;
- (b) that an applicant must demonstrate the ability to establish and operate an office of a sheriff;
- (c) the minimum requirements for appointment as sheriff, which must include information in respect of the—

- (i) integrity of the person conducting the business of sheriff; and
- (ii) technical competence and experience required to conduct the business of sheriff, which shall at least include the following:
 - (aa) An appropriate post grade 12 tertiary qualification;
 - (bb) An understanding of civil law and knowledge and understanding of the relevant aspects of the—
 - (A) Constitution of the Republic of South Africa, 1996;
 - (B) Magistrates' Court Act, 1944 (Act No. 32 of 1944);
 - (C) Rules of Court published by Government Notice No. R. 1108 of 21 June 1968;
 - (D) Supreme Court Act, 1959 (Act No. 59 of 1959);
 - (E) Rules of the Supreme Court of Appeal published by Government Notice No. R. 1523 of 27 November 1998;
 - (F) Criminal Procedure Act, 1997 (Act No. 51 of 1977);
 - (G) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
 - (H) Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (I) National Credit Act, 2005 (Act No. 34 of 2005); and
 - (J) Sheriffs Act 1986 (Act No. 90 of 1986);

(d) that preference will be given to applicants whose appointments will promote—

- (i) equitable demographic representation and inclusiveness by race, gender, disability or any other constitutionally recognised ground; and

- (ii) the values enshrined in the Constitution;
- (e) that an appointment will be subject to the issuing of a fidelity fund certificate;
- (f) that a person appointed as sheriff will have to successfully comply with a standard of training before he or she may be issued with a fidelity fund certificate;
- (g) that a person appointed as sheriff may not, without the approval of the Minister in terms of section 53 of the Act, perform or engage himself or herself to perform remunerative work outside the office as sheriff;
- (h) that applications must be lodged with the Director-General or the court manager where the vacancy occurs or will occur;
- (i) the name, address and contact number of any person designated by the Director-General for enquiries regarding the vacancy; and
- (j) the closing date for applications, which date shall be at least 21 working days after the advertisement was posted in terms of subregulation (1).

Application for appointment as sheriff

- 2B.** (1) An application for appointment as sheriff must be—
- (a) in writing on a form which corresponds substantially with Form 1 of the Annexure; and
 - (b) submitted to the—
 - (i) Director-General; or
 - (ii) court manager where the vacancy occurs or will occur.

(2) The court manager shall, immediately after the closing date mentioned in the advertisement in question, submit any application received by him or her to the Director-General.

(3) The application referred to in subregulation (1) must be accompanied by—

- (a) a *curriculum vitae* of the applicant;
- (b) a certified copy of the identity document of the applicant;
- (c) certified copies of all educational qualifications of the applicant;
- (d) certified copies of certificates of service or, if not available, an affidavit by the applicant in respect of previous periods of employment rendered by him or her;
- (e) testimonials from previous employers of the applicant, if available;
- (f) the nature and history of any past or present business undertaking, occupation or trade of the applicant;
- (g) the names, addresses and telephone numbers of two references;
- (h) an affidavit regarding previous convictions and sequestrations, if any;
- (i) an affidavit with the necessary supporting documentation, if applicable, that an applicant has the financial ability to establish and operate the office of sheriff, including a list of all assets and liabilities of such an applicant;
- (j) a written undertaking, in the case of a—
 - (aa) person who already occupies the office of sheriff in a different court or area;
 - (bb) practicing attorney; or
 - (cc) practicing advocate,

that he or she will vacate that office upon his or her appointment to the vacant office of sheriff; and

- (k) a completed application form regarding the obtaining of a fidelity fund certificate on a form that corresponds substantially with Form 4 of the Annexure.

Advisory Committee

2C. (1) An Advisory Committee shall be established in every province to shortlist, interview and recommend applicants for a vacancy in the post of sheriff in the province in question.

(2) An Advisory Committee contemplated in subregulation (1) comprises—

- (a) a regional magistrate, a chief magistrate or another appropriately experienced magistrate appointed by the Minister after consultation with the Magistrates Commission, which magistrate shall be the chairperson of the Advisory Committee;
- (b) the person who occupies the post in the Department of Justice and Constitutional Development of regional head of the province or region in question;
- (c) a magistrate who heads the court where the vacancy occurs or will occur, or his or her nominee;
- (d) the court manager of the court where the vacancy occurs, or will occur;
- (e) two attorneys nominated by the law society in whose area of jurisdiction the vacancy occurs or will occur;

- (f) two sheriffs appointed by the Minister, after consultation with the Board and after receiving nominations from any association or professional body representing the sheriffs; and
- (g) a member of the Board, who is not a sheriff, nominated by the Board.

(3) The nomination of a person on the Advisory Committee must, where feasible, be based on the principle of equitable demographic representation and inclusiveness of race, gender, disability or any other constitutionally recognised ground.

(4) Five members of the Advisory Committee shall constitute a quorum.

(5) A decision supported by five members of the Advisory Committee constitutes a binding decision of the Committee.

(6) In the case of an equality of votes, the chairperson has a casting vote.

Selection criteria, interview and appointments

2D. (1) The Minister may only appoint a person to the post of sheriff if that person is a fit and proper person to be appointed to the office of sheriff in accordance with the procedure set out in this regulation.

(2) In determining whether a candidate is a fit and proper person to be appointed to the office of sheriff and to be shortlisted for an interview, the Advisory Committee shall consider, amongst other things, whether the candidate—

- (a) properly completed a form which corresponds substantially with Form 1 of the Annexure;
- (b) properly completed a form which corresponds substantially with Form 4 of the Annexure;
- (c) has the financial ability to establish and operate the office of sheriff;
- (d) already occupies the office of sheriff in a different court or area or is a practicing attorney or a practicing advocate who will be prepared to vacate that office or profession upon his or her appointment to the vacant office of sheriff;
- (e) complies with the requirements set out in regulation 2A(2)(c); and
- (f) if appointed, will promote the objectives contemplated in regulation 2A(2)(d).

(3) The Advisory Committee shall submit—

- (a) the shortlist contemplated in subregulation (2); and
- (b) a completed form that corresponds substantially with Form 4 of the Annexure,

to the Board in order for the Board to indicate to which of the persons on the shortlist the Board is prepared to issue a fidelity fund certificate.

(4) The Advisory Committee, through the chairperson, shall inform the applicants found to be fit and proper in terms of subregulation (2) and in respect of whom the Board is prepared to issue fidelity fund certificates as is contemplated in subregulation (3), of the date, time and place to appear before the Advisory Committee to be interviewed.

(5) The Advisory Committee shall compile a report—

- (a) containing its substantiated comments in respect of each interviewed applicant; and
- (b) in which is listed at least five candidates who are fit and proper persons to be appointed as sheriff.

(6) The report and all the applications received shall, within 14 days after the interviews, be submitted to the—

- (a) Director-General who shall immediately submit them to the Minister; and
- (b) Board.

(7) If, amongst the interviewed candidates, there are less than five candidates who are fit and proper persons to be considered for appointment to the office of sheriff, the Advisory Committee must submit a report to the Minister—

- (a) recommending a list of the fit and proper candidates for appointment to the office of sheriff; and
- (b) explaining why the appointment must be made from the list.

(8) (a) The Minister may, after receipt of the report contemplated in subregulation (5) or (7), and if he or she is satisfied that all the requirements have been met, appoint one of the listed candidates as sheriff to the vacant post.

(b) The Minister may return the report to the Advisory Committee and direct that the vacancy be re-advertised to enable the Advisory Committee to prepare a second list with the names of fit and proper candidates for appointment to the office of sheriff if he or she—

- (i) is not satisfied that all the requirements have been met; or

(ii) is not satisfied with the explanation contemplated in subregulation (7).

(c) A candidate whose name appeared on a rejected list is not excluded from inclusion on any subsequent list.

(9) A person appointed by the Minister as sheriff in terms of subregulation (8)(a), who occupies an existing office of a sheriff in a different court or area, or who is a practicing attorney or practicing advocate, must vacate the office or profession he or she occupies and commence with his or her duties as sheriff—

(a) within the time specified by the Minister; or

(b) if the person is required to give notice of termination of employment, within the period agreed upon with the Minister.

(10) A person contemplated in subregulation (9) who does not comply with the provisions of that subregulation shall, upon the expiry of the time specified by the Minister in that subregulation, be regarded as having been rescinded."

Amendment of regulation 2A of Regulations

5. Regulation 2A of the Regulations is hereby amended—

(a) by the renumbering of that regulation to regulation 2E; and

(b) by the substitution in subregulation (5) for the expression "regulation 2" of the expression "regulations 2, 2A, 2B, 2C and 2D".

Insertion of regulations 2F and 2G in Regulations

6. The following regulations are hereby inserted in the Regulations, after regulation 2E:

"Training of sheriffs

2F. (1) (a) A sheriff may not be issued with a fidelity fund certificate unless he or she has successfully completed an applicable training course.

(b) The Board shall—

- (i) with the approval of the Minister, specify the duration, content and extent of a training course; and
- (ii) determine the date, time and place where a training course shall be conducted.

(2) (a) A sheriff who has failed to successfully complete the training course contemplated in subregulation (1) may on written request addressed to the Board be allowed to attend one additional training course at his or her own expense.

(b) The Board may refuse such request if it is satisfied that there is no reasonable prospect that the person applying will complete the course successfully.

(3) The Minister shall remove a sheriff from office if—

- (a) the sheriff fails to successfully complete a training course contemplated in subregulation (1) or (2); or
- (b) the Board, acting under subregulation (2)(b), refuses a request to attend an additional training course.

Exemption from training

2G. Notwithstanding regulation 2F, the Minister may, at the written request of a sheriff and after consultation with the Board, exempt the sheriff from the requirement to complete the training course contemplated in that regulation if the Minister is satisfied that the sheriff—

- (a) has successfully completed the required training course or successfully completed any other course which the Minister considers equivalent to that training course; or
- (b) on account of his or her previous experience as a sheriff has suitable knowledge of and expertise in the work of a sheriff."

Amendment of regulation 3 of Regulations

7. Regulation 3 of the Regulations is hereby amended—

- (a) by the substitution in subregulation (2) for the expression—
 - (i) "R50,00" of the expression "R500,00"; and
 - (ii) "R100,00" of the expression "R300,00"; and
- (b) by the substitution in subregulation (5) for the expression "R25,00" of the expression "R50,00".

Amendment of regulation 4 of Regulations

8. Regulation 4 of the Regulations is hereby amended by the substitution for the expression "R50,00" of the expression "R500,00".

Amendment of regulation 6 of Regulations

9. Regulation 6 of the Regulations is hereby amended—
- (a) by the substitution in subregulation (1) for the expression "0,60 percent" of the expression "1,5 per cent"; and
 - (b) by the substitution in subregulation (3) for paragraph (c) of the following paragraph:
 - "(c) the amounts, which must be specified and must not exceed 20% of his or her gross income, deducted from his or her gross income to calculate his or her net income;"

Substitution of regulation 10 of Regulations

10. The following regulation is hereby substituted for regulation 10 of the Regulations:

"Vacating of office

10. (1) When a sheriff dies or for any other reason vacates his or her office, all process and other documents which were in his or her possession, including such records as may be necessary to pay claims against his or her account, shall be taken into possession by the Director-General and delivered to the sheriff's successor, who shall be responsible for the payment of those claims from the moneys in that account: Provided that

such delivery shall not take place unless the successor in question furnishes proof that—

- (a) a fidelity fund certificate has been issued to him or her; or
- (b) he or she has paid the contribution referred to in section 30(1)(c)(ii) of the Act.

(2) As soon as a sheriff has received the process and other documents, including accounting records, from the Director-General and that sheriff has as far as possible paid all claims against the trust account, the sheriff shall close the trust account of his or her predecessor.

(3) Any amount to the credit of the account at the closing of a trust account shall be paid by the successor to the persons entitled thereto.

(4) The Director-General, an inspector appointed under section 56 of the Act or the Board may in writing direct a banking institution or building society to furnish him, her or it within the period specified in the direction with such information as he, she or it may require in connection with an account of a sheriff and as may be available to the banking institution or building society.

(5) Every record or other document acquired by or in the possession of a sheriff by virtue of his or her office shall be retained by the sheriff for a period of at least three years after the date to which it relates."

Amendment of regulation 11A of Regulations

11. Regulation 11A of the Regulations is hereby amended by the substitution in subregulation (1) for the expression "R1 500" of the expression "R10 000".

Amendment of regulation 12 of Regulations

12. Regulation 12 of the Regulations is hereby amended by the insertion of the following subregulation after subregulation (1):

"(1A) The Board may condone a late notification of appeal under exceptional circumstances and upon a written application setting out the reasons why the 30 day period referred to in subregulation (1) cannot or could not be adhered to, provided that such application is lodged with the Board within 90 days after a finding has been made or a penalty imposed."

Substitution of Form 1 of Annexure to Regulations

13. The following form is hereby substituted for Form 1 of the Annexure to the Regulations:

"FORM 1
APPLICATION FOR APPOINTMENT AS SHERIFF
REGULATIONS RELATING TO SHERIFFS, 1990

[Regulation 2B(1)]

Please note:

1. *This form must be completed in block letters.*
2. *The information required in respect of race and gender, is for giving effect to legislation and policies relating to equity.*
3. *If there is a conflict of interest regarding any current post held by you, you may be asked to relinquish such post.*
4. *Appointment as sheriff will be subject to qualifying for a Fidelity Fund Certificate.*
5. *A person appointed as sheriff will have to successfully complete a training course before he or she may resume the duties of a sheriff.*
6. *The following documentation must accompany the application form:*
 - (a) *A curriculum vitae;*
 - (b) *a certified copy of your identity document;*
 - (c) *certified copies of all educational qualifications;*
 - (d) *certificates of service or, if not available, an affidavit by you in respect of previous periods of service;*
 - (e) *testimonials, if available, from previous employers;*
 - (f) *the names, addresses and telephone numbers of two references;*
 - (g) *an affidavit regarding prior convictions and sequestrations (if any);*
 - (h) *an affidavit that you have the financial ability to establish and operate the office of sheriff, including a list of all your assets and liabilities; and*
 - (i) *if you occupy the office of a sheriff in a different court or area or are a practicing attorney or a practicing advocate, a written undertaking that you will vacate that office or profession upon your appointment to the vacant office of sheriff.*

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

PART A: APPLICATION [To be completed by applicant]

Surname:	
----------	--

Full names	
------------	--

ID. No./Date of birth:	
------------------------	--

Race	African	White	Coloured	Indian
------	----------------	--------------	-----------------	---------------

Gender	Female	Male
--------	---------------	-------------

Are you a South African Citizen? If no, please state nationality:	Yes	No
---	------------	-----------

Have you been convicted of a criminal offence? If yes, please give details of offence and sentence:	Yes	No
--	------------	-----------

Have you ever been dismissed from employment? If yes, please give full details:	Yes	No
---	------------	-----------

Has any civil judgment been given against you? If yes, please give full details:	Yes	No
---	------------	-----------

Has any sequestration order been given against you? If yes, please give full details:	Yes	No
---	------------	-----------

Residential address:	
	Code ()

Residential telephone number:	
-------------------------------	--

Cellular telephone number:	
----------------------------	--

Occupation:	
-------------	--

Work address:	
	Code ()

Work telephone number:	
------------------------	--

Preferred method for correspondence:	Post	E-mail	Fax
--------------------------------------	-------------	---------------	------------

Correspondence contact details (In terms of above):			
Postal address:			
	Code ()		
Preferred official language for correspondence?			
Do you have a valid driver's licence?	Yes	No	Code:

PART B: CHOICE OF CENTRE OF APPOINTMENT (in the event of more than one vacancy in one region being advertised)

Centers where appointment is preferred, in order of preference:	1.
	2.
	3.

PART C: LANGUAGE PROFICIENCY - state 'good', 'fair' or 'poor'

	Languages (specify)					
Speak						
Read						
Write						

PART D: QUALIFICATIONS

Name of school/Technical College	Highest qualification obtained	Year obtained
Tertiary education (complete for each qualification you obtained after your grade 12 qualification, as well as seminars/courses attended relating to functions of sheriff)		

Name of institution	Name of qualification	Year obtained
Current study (institution and qualification):		

PART E: WORK EXPERIENCE AND CURRENT BUSINESS ACTIVITIES

Employer (including current employer)	Position held	From		To		Reason for leaving (including retirement, misconduct or ill-health)
		MM	YY	MM	YY	

PART F: REFERENCES

Name	Relationship to you	Tel. No. (office hours)

PART G: DECLARATION

I declare that all the information provided (including any attachments) is complete and correct to the best of my

knowledge. I understand that any false information supplied could lead to my application being disqualified or my discharge if I am appointed.

Signed atthis.....day of20.....

.....

Signature of Applicant".

Repeal of Form 2 of Annexure to Regulations

14. Form 2 of the Annexure to the Regulations is hereby repealed.

Repeal of Form 3 of Annexure to the Regulations

15. Form 3 of the Annexure to the Regulations is hereby repealed.