

**MAGISTRATES ACT, 1993(ACT NO 90 OF 1993)**  
**REGULATIONS**

In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 361 of 11 March 1994, as amended by Government Notices Nos. R. 644 of 1 April 1994, R. 1407 of 11 August 1994, R. 1808 of 17 October 1994, R. 1707 of 27 October 1994, R. 1791 of 17 November 1995, R. 72 of 26 January 1996, R. 331 of 1 March 1996, R. 957 of 7 June 1996, R. 1178 of 19 July 1996, R. 1242 of 2 August 1996, R. 1340 of 12 August 1996, R. 1567 of 27 September 1996, R. 1627 of 1 October 1996, R. 178 of 7 February 1997, R. 421 of 20 March 1997, R. 1081 of 8 August 1997, R. 274 of 20 February 1998, R. 997 of 7 August 1998, R. 56 of 15 January 1999, R. 1498 of 17 December 1999 and R. 1339 of 26 September 2003.

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## CHAPTER I GENERAL PROVISIONS

### Definitions

1. In these regulations unless the context otherwise indicates -

“**abroad**” means a country outside the borders of the Republic;

“**accommodation expenditure**” means the expenditure in respect of lodging, meals (including non-alcoholic beverages with meals) and laundry;

“**appropriate experience**” means experience gained after obtaining the legal qualifications referred to in regulation 3(1)(e), and regarded by the Commission as appropriate;

“**candidate**” means a person who applies for appointment as a magistrate;

“**court manager**” the court manager at the court where a magistrate is performing his or her duties;

“**Department**” means the Department of Justice and Constitutional Development ;

“**dependants**” means the members of a magistrate’s household, excluding domestic workers;

“**Director-General**” means the Director-General of Justice and Constitutional Development or a person delegated by him or her;

**“furnished housing”** means a hotel room or a rented room, a caravan, a hired furnished private house or official quarters which are provided, except by the magistrate, with the basic and essential furnishings;

**“head of office”** means, in the case of a district magistrate, the head of the relevant magistrate’s office, in the case of a regional magistrate, the regional court president of that region and, in the case of a family magistrate and a senior civil magistrate, the chief magistrate under whom he falls;

**“headquarters”** means the city, town or place which has been designated by the Commission or a person designated by the Commission;

**“household”** means -

- (a) the spouse of a magistrate;
- (b) the magistrate’s or the spouse of the magistrate’s of necessity dependent child who is *bona fide* resident with such magistrate: Provided that if such child studies at an institution for post-school education, whether intramurally or extramurally, he shall be deemed to be a member of the household, but only -
  - (i) if he or she did not after leaving school, take up any permanent full-time employment (including any type of vocational training to which remuneration is attached), excluding during vacations or temporary full-time employment which he or she had taken up between leaving school and commencing his or her studies at an educational institution at the commencement of the academic year following the completion of his or her schooling; and
  - (ii) until -
    - (aa) he attains the minimum post-school qualification (or minimum combination or post-school qualifications) which will enable him to take up employment in the field of study for which he originally intended to qualify himself; or

- (bb) the normal prescribed duration of the study period, as prescribed by the institution concerned for the study course, plus one academic year, expires if it takes him longer than such prescribed period to attain the relevant qualification as a result of poor academic performance; or
  - (cc) he discontinues the course of study concerned; or
  - (dd) he changes his course of study,  
whichever of the said for events occurs first;
- (c) the magistrate's or the spouse of the magistrate's relative who is permanently resident with him and who is of necessity dependent on him and whose income, from any source, does not exceed the sum of-
- (i) the appropriate maximum basic social pension as prescribed by regulations promulgated in terms of -
    - (aa) the Social Pensions Act, 1973 (Act No. 37 of 1973); or
    - (bb) any other social pensions Act which is applicable in the Republic of South Africa; plus
  - (ii) the maximum allowance for a war veteran to whom a social pension has been awarded in terms of the War Veterans' Pensions Act, 1968 (Act No. 25 of 1968); plus
  - (iii) the maximum allowance paid to a person as a result of a late application for a social or war veteran's pension, and, if the relative concerned is a social pensioner or war veteran pensioner, any allowances other than those referred to in subparagraphs (ii) and (iii) above, which he may receive in terms of the relevant regulations referred to above may be ignored for the purposes of this paragraph: Provided that where two relatives so reside with him and are dependent on him and where the one relative would normally have been a dependant of the other relative, for instance a father and a mother, both such relatives may be regarded as members of his household only if half of their joint income, from source, does not exceed the sum of the maximum basic social pension and war veteran's pension and the allowances contemplated in paragraphs (i) and (iii) above; and

- (d) not more than two domestic workers (including nursemaids) employed in a full-time capacity by the magistrate;

**“incidental expenditure”** means the expenditure in respect of tips for table and room service, reading matter, telephone calls, dry-cleaning and liquid refreshments which do not form part of meals;

**“interim accommodation expenditure”** means furnished housing which is occupied temporarily while permanent accommodation is being sought or until permanent accommodation, which has already been obtained, becomes available for occupation;

**“official quarters”** means those quarters, inclusive of buildings, outbuilding, grounds, fixtures, fittings, machines and equipment, but exclusive of furniture, that are owned or are held on lease or are otherwise in the lawful possession of the State and that are available to the Director-General for assignment in terms of regulation H5 of the Public Service Regulations or that have been allotted to a magistrate in terms of regulation H6 of the Public Service Regulations;

**“personal property”** means the movable property of a magistrate and of his household, which is normally intended for personal use, including vehicles but excluding livestock, domestic animals and pets;

**“preferentially promotable”** means that the magistrate’s work performance is of such a high standard that there is enough justification to promote him over the head of his rank associates that are promotable out of turn, regardless of his position of seniority;

**“promotable in turn”** means that the magistrate is regarded as suitable for promotion when his turn for promotion arrives in accordance with his position of seniority;

“**promotable out of turn**” means that the magistrate’s work performance is of such a nature that there exists enough justification to promote him over the head of his rank associates that are promotable in turn, regardless of his position of seniority;

“**Public Service Regulations**” means the Public Service Regulations promulgated under section 41 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“**Public Service Staff Code**” means the Public Service Staff Code referred to in section 42 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“**State**” means the Government of the Republic of South Africa;

“**the Act**” means the Magistrates Act, 1993 (Act No. 90 of 1993); and

“**transfer**” means -

- (i) the moving of a magistrate and his or her household from one headquarter to another in the Republic or to or from abroad
- (ii) the temporary or permanent vacation of official quarters at a magistrate’s headquarters in order to move into other housing;  
or
- (iii) the vacation by a magistrate of housing in order to move into the official quarters at his headquarters.

## **CHAPTER II**

### **REGULATIONS REGARDING MAGISTRATES**

#### **PART I: RECRUITING OF CANDIDATES**

##### **Advertising of vacancies**

2. A vacancy for the office of a magistrate may be advertised by the Director-General by circular in the Department and in at least two newspapers which are circulated throughout the country in the official languages which the Commission

prescribes: Provided that the Director-General shall be obliged to advertise the vacancy if the Commission so orders.

## **PART II: APPOINTMENT**

### **Requirements for appointment**

3.(1) No person shall be appointed as a magistrate unless he -

- (a) is a South African citizen or has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;
- (b) is a fit and proper person;
- (c) is, according to the health questionnaires referred to in regulation 4(2)(b), in good health: Provided that if there is uncertainty in respect of the good health of an applicant, the Commission may request that he subject himself to a health examination at his own expense and submit a medical report on his health: Provided further that if the health questionnaire referred to in regulation 4(2)(b) is older than three months from the date of examination, or his medical examination, a new health questionnaire or medical report may be requested by the Commission;
- (d) is competent in the official languages in which, to the opinion of the Commission, he should be competent;
- (e) has the legal qualifications referred to in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and
- (f)(i) has successfully completed an applicable course (the duration, content and extent of which shall be specified by the Chief of the Justice College after consultation with the Commission) to the satisfaction of the Chief of the Justice College or a person designated by him; and
- (ii) has, after the successful completion of the course referred to in subparagraph (i), for a substantive period of six months, to the satisfaction of the Commission, occupied the office of a judicial officer in respect of which he is a candidate in an acting or temporary capacity:

Provided that the Minister may, on the recommendation of the Commission, exempt a candidate from the requirements of paragraphs (i) or (ii) or both paragraphs.

(2) A candidate who has not already been appointed in terms of section 9(1) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), as judicial officer in another capacity as that in respect of which he is a candidate, is in the employment of the State in a full-time or temporary capacity while he attends the course referred to in subregulation (1)(f)(i) and fills the position of judicial officer referred to in subregulation (1)(f)(ii).

### **Application by candidates**

4.(1) A candidate shall make an application for appointment as magistrate in writing on a form which corresponds substantially with Form 1 of Schedule A and hand it in to the Director-General or at a magistrate's office.

(2) The application referred to in subregulation (1) shall be accompanied by the following documents:

- (a) A certified copy of the candidate's identity document;
- (b) a completed health questionnaire which corresponds substantially with Form 2 of Schedule A;
- (c) certified copies of all educational qualifications;
- (d) certificates of service or, if not available, an affidavit by the candidate in respect of previous periods of service;
- (e) testimonials from previous employers, if available;
- (f) an affidavit setting out the candidate's assets and liabilities; and
- (g) names and addresses of two references.

(3) A confidential report which corresponds substantially with Form 3 of Schedule A shall be completed by the Director-General or the head of office or a person delegated by him.

(4) If the documents referred to in subregulations (1) and (2) are handed in at a magistrate's office, such documents shall, together with the confidential report referred to in subregulation (3), be sent to the Director-General by the head of office or a person delegated by him.

(5) The Director-General shall submit the application referred to in subregulation (1) and the confidential report referred to in subregulation (3) to the Commission for a recommendation regarding the suitability of the applicant for purposes of the course and the office of judicial officer referred to in regulation 3(1)(f).

(6) The Director-General shall implement the Commission's recommendation referred to in subregulation (5).

(7) After completion of the period referred to in regulation 3(1)(f)(ii) the Commission shall forward the documents referred to in this regulation, together with a recommendation on the appointment of a candidate to the office of magistrate, to the Director-General for forwarding to the Minister.

(8) If the Commission, after receiving the documents referred to in subregulation (5), is of the opinion that the candidate should be exempted from one or both of the appointment requirements referred to in regulation 3(1)(f), the Commission shall forward the documents referred to in this regulation, together with a recommendation on the appointment of a candidate to the office of magistrate, to the Director-General for forwarding to the Minister.

### **Filling of vacancies**

5. In the appointment or promotion of a magistrate, only the qualifications, level of education, relative merits, efficiency and competency for the office of persons who qualify for the relevant appointment or promotion shall be taken into account.

### **Date of appointment**

6. The appointment of a candidate shall take effect on the date on which he accepts service as magistrate, except where he has accepted such service on the

first workday of the month and that day is not the first day of the month, in which case the first day of such month shall be deemed to be the date on which he accepted service.

### **Salary recognition basis**

7. (Repealed)

### **Date of qualification obtained**

8.(1) A qualification, except one for which a thesis should be submitted or practical experience should be gained, shall be deemed to have been obtained with effect from the date immediately following that date on which the final examination of the last subject for the obtaining of the qualification was passed.

(2) A qualification in respect of which a thesis should be submitted, shall be deemed to have been obtained with effect from the date on which the student finally fulfills his obligations, namely either the date on which his thesis is accepted finally, or the date on which he successfully undergoes the final oral examination, whichever is the later date.

(3) A qualification in respect of which practical experience should be gained, shall be deemed to have been obtained with effect from the date immediately following that date which the relevant university or other educational institution indicates as the date on which the candidate has complied with all the requirements for the qualification.

(4) (repealed)

### **Requirements in respect of experience**

9. (Repealed)

### **Salary determination and salary of cash recognition**

10. (Repealed)

**Recognition for higher qualifications obtained after appointment**

11. (1) (Repealed)

(2) A cash amount shall subject to subregulation (4), be awarded to a magistrate, excluding a Senior Magistrate, a Regional Magistrate, a Chief Magistrate and a Regional Court President, for obtaining a higher qualification which is regarded by the Commission as appropriate calculated at 7% of the entry salary of a magistrate with up to and including two years' appropriate experience as determined by the Minister by notice in the Gazette in terms of section 12(1) of the Act.

(3) The cash amount referred to in subregulation (2) shall, subject to the provisions of section 12(7) of the Act be payable -

- (a) immediately after the obtaining of the qualification, if the magistrate has filled the position of magistrate for more than 12 calendar months before the obtaining of the qualification; or
- (b) upon the date which follows the date on which he has filled the office of magistrate for 12 continuous calendar months.

(4) Recognition on the basis set out in this regulation shall be limited to the payment of one cash amount.

**Salary progression**

12. (Repealed)

**Salary incremental periods and salary incremental dates**

13. (Repealed)

**Privileges on appointment**

14.(1) A magistrate and his household who, as a result of his appointment, necessarily have to move may claim reasonable actual expenses for travelling, and the transport, insurance and storage costs of his personal belongings, for at most one month, on the same basis as that set out in regulation 23(1)(a)(ii), (b) and (c).

(2) A magistrate to whom expenses referred to in subregulation (1) are paid shall conclude a written contract with the State which corresponds substantially with Form 4 of Schedule A, in which he undertakes to serve in the office of magistrate for not less than twelve months.

(3) If a magistrate does not comply with the provisions of the contract referred to in subregulation (2) he shall pay back a *pro rata* part of the amount which was paid to him in terms of subregulation (1), in respect of the remaining period.

(4) The Director-General shall determine the conditions, guidelines, procedures and requirements in respect of the payment of the expenses referred to in these regulations.

(5) The Director-General may lengthen the periods referred to in this regulation.

#### **Privileges on appointment of a magistrate from abroad**

15.(1) On the appointment of a magistrate from abroad the reasonable actual expenses which arise from his journey and that of his household, and the transport and insurance of his personal belongings, may be paid to him, as may other supplementary financial compensation for the defraying of expenses connected with his travelling to and settlement in the Republic.

(2) The provisions of regulation 14(2), (3), (4) and (5) shall *mutatis mutandis* apply to a person referred to in subregulation (1).

### **[PART III: PROMOTION**

#### **General promotion measures**

**16. A magistrate with more than five years' appropriate experience may on the recommendation of the Commission be promoted by the Minister to a higher post with a clearly distinguishable higher level of work which is accompanied by the granting of the rank and salary of that higher post: Provided that there is a vacancy in a higher post: Provided further that a magistrate who performs certain duties in terms of section 14 of the Act conferred upon him by the Minister in a specific case after consultation with**

the Commission may be promoted to a higher post without absorption into such higher post.

#### **Seniority date**

**17.(1)** For purposes of seniority and salary, the actual date of absorption into the post concerned shall be deemed to be the date of entry to the rank concerned, except in the cases falling under section 14, in which case the date of entry shall be determined by the Minister.

**(2)** For purposes of seniority the names of magistrates shall be arranged by the Director-General according to rank (where the post promotion basis applies) and experience on comparable hierarchical levels in sequence of date of entry into those ranks.

**(3)** Seniority shall be determined on the basis of entry to a specific rank.

**(4)** If two or more magistrates have the same seniority date, all previous seniority dates on the previous ranks or legs shall be taken into account.

**(5)** If the application of subregulation (4) still results in equal seniority, the dates of birth of the magistrates concerned shall be taken into account.

#### **Promotion periods**

**18.(1)(a)** In a case where the post promotion basis applies, a magistrate shall become eligible for consideration for promotion in a merit year, namely 1 April to 31 March of the next year, if he completed the prescribed qualifying service period before or on 31 March of the preceding merit year.

**(b)** In a case where no specific qualifying periods of service have been laid down, a period of two years' service shall apply.

**(2)** (Repealed)

#### **Evaluation procedure**

19.(1) The evaluation of magistrates shall be done by an evaluation authority which consists of magistrates with a higher rank than the magistrate who is being evaluated, and which is appointed by the various Chief Magistrates and Regional Court Presidents concerned: Provided that Regional Magistrates, Chief Magistrates and Regional Court Presidents shall not be subject to evaluation.

(2) deleted

(3) The evaluation authority may co-opt one or more persons as members of the evaluation authority.

(4) The evaluation of magistrates up to and on the third leg shall be done on the basis of Form 1 of Schedule B.

(5) The evaluation of magistrates on higher gradings shall be done on the basis of Form 2 of Schedule B.

(6) When magistrates referred to in subregulations (4) and (5) are evaluated the provisions of Chapter A18 of the Public Service Regulations and Chapter B.X of the Public Service Staff Code shall *mutatis mutandis* apply: Provided that any reference to "officer" or "employee" in the said provisions shall be interpreted as a reference to "magistrate".

(7) If an evaluation authority has doubts about a magistrate's capacity to perform his duties in an efficient manner, the Commission shall be notified immediately of such fact.

(8) After completion of the evaluation by the various evaluation authorities for a certain year, a priority list shall be compiled by the Director-General on which the names of those who were subject to evaluation -

(a) according to promotability rating; and

(b) within promotability rating according to seniority, regarding the different ranks or legs shall be indicated.

(9) All personnel evaluation questionnaires and priority lists shall come into operation on 1 April of the year following the completion of the evaluation and shall remain in force for a period of 12 months.

#### **Priority lists**

20.(1)(a) When use is made of priority lists for the purposes of the filling of a vacancy in the promotion ranks, the candidature of all magistrates who hold promotable positions on such lists and who can compete for the higher post shall be considered by the Commission against the demands of the post concerned, including demands as to the person, in order to identify the most suitable person for the post.

(b) If the magistrate who is nominated does not hold the first position on the list concerned, the grounds upon which the choice was made at the expense of those who hold higher positions, and the justifiability of the consequences, namely that the last-mentioned will be passed over, shall be given in full and substantiated to the Minister.

(c) The candidature of magistrates who hold lower positions than the nominated magistrate need not be discussed.

(2) If vacancies are advertised, only the candidature of magistrates and persons who applied for the post, shall be considered.

#### **Promotion date**

21. Promotion shall take place with effect from the date upon which the magistrate assumes duty in the vacant higher post.]

#### **PART IV: TRANSFERS**

##### **General provisions.**

22. (1) A magistrate may-  
(a) upon due application;

- (b) with his or her consent; or
- (c) without his or her consent, but for good reasons and without favour or prejudice, if necessary in the interest of the administration of justice,

be transferred upon the recommendation and direction of the Commission. [The Director-General may transfer a magistrate from his headquarters to other headquarters when it is expedient.]

(2) The Director-General shall, upon direction of the Commission, effect the transfer of a magistrate. [A magistrate who feels aggrieved because of a transfer may make representations to the Director-General.]

**[(3) If the representations referred to in subregulation (2) are unsuccessful and not dealt with to the satisfaction of the magistrate concerned, the magistrate may make representations to the Commission.]**

**(4) The Commission makes a final decision regarding the transfer of the magistrate.]**

### **Resettlement costs**

23.(1) The following expenses may be paid to a magistrate when he is transferred:

- (a) Travelling and subsistence expenses with regard to -
  - (i) the magistrate's and a member of his household's reasonable actual travelling and subsistence expenses resulting from a single prior visit for a period not exceeding seven days to the new headquarters; and
  - (ii) the magistrate's and his household reasonable actual travelling and subsistence expenses resulting from the transfer to the new headquarters,

in the amounts referred to in regulations 48(d) and 49(1)(a) and (b).
- (b) Expenses incidental to the transport of the personal possessions of the magistrate and his household, including the packing thereof and the eventual unpacking at permanent housing, as well as comprehensive insurance cover thereof: Provided that the said expenses are incurred before the expiry of six months after the transfer.

- (c) Expenses incidental to the storage of the personal possessions of the magistrate and his household for a period not exceeding two months, as well as comprehensive insurance cover thereof during that period.
- (d) Expenses-
  - (i) with regard to interim accommodation in a rented furnished dwelling at the existing headquarters for a period not exceeding seven days under circumstances that prevent further stay in the normal dwelling and at the new headquarters for a period not exceeding seven days under circumstances that prevent immediate moving into permanent accommodation;
  - (ii) with regard to interim accommodation in a rented furnished dwelling for a period not exceeding two calendar months while permanent accommodation is being sought or while circumstances exist that prevent the moving into permanent accommodation within seven days, in which case the prior written permission of the Director-General is required; or
  - (iii) in respect of a travelling allowance in accordance with a tariff prescribed in regulation 48 (d) for the purposes of daily forward and return journeys between the existing and the new headquarters for a period not exceeding two calendar months while permanent accommodation is still being sought, in which case the prior approval of the head of the office and the prior written permission of the Director-General is required.
- (e) Expenses with regard to customs duty, import or value added tax and other levies or moneys with regard to the transport of motor vehicles (including a motor financing scheme vehicle) over international borders.
- (f) Any costs, including the transfer costs of the property, bond costs, costs for the drafting of a deed of sale, value-added tax and inspection fees resulting from the transfer on the purchase of a house or the purchase of a building site and the erection of a house thereon: Provided that first-time home buyers shall not be compensated for these costs.
- (g) A non-recurrent amount for each school-going child to expenditure on school books, uniforms, school sports outfits and other necessities, which shall be in

accordance with the allowance as prescribed from time to time in the Public Service.

- (h) A non-recurrent amount to defray miscellaneous expenses, for which specific provision has not been made elsewhere in these regulations, on the following basis:
- (i) If furnished housing is occupied permanently: An amount equal to 25 % of the magistrate's basic monthly pensionable salary as at the date of resettlement;
  - (ii) if furnished housing is occupied permanently:
    - (aa) An amount equal to 50 % of an unmarried magistrate's basic monthly pensionable salary as at the date of resettlement: Provided that should the magistrate's reasonable actual expenditure exceed the said amount, the expenditure so incurred be paid to him or her to a maximum amount equal to his or her basic monthly pensionable salary on the date of resettlement.
    - (bb) an amount equal to a full month's basic pensionable salary of a magistrate with dependants as at the date of resettlement;

- (iii) if the amount referred to in paragraph (i) or (ii) is less than an amount calculated according to the applicable percentage basis in the said paragraphs based upon the salary notch of a Senior Provisioning Administration Officer in the Public Service as amended from time to time, the applicable amount calculated in the last-mentioned way shall be paid; and
  - (iv) the amount referred to in subparagraph (i) or (ii) shall not be more than an amount based on the third salary notch of a Director in the Public Service as amended from time to time.
- (i) The payment of a home-owners allowance with regard to a house at the previous headquarters shall continue on such basis and for such period as the Minister, or a person designated by him, may approve.
- (2) To a magistrate and his household, who, at vacation of office under section 13(1) and (5) of the Act, or at the death of the magistrate, within six months of vacation of office or death, move from an existing home to a place where he and his household are desirous to live in the Republic or an independent state that was previously part of the Republic, the expenses for travelling, as well as the transport, insurance and storage costs of his personal possessions may be compensated non-recurrent on the same basis as set out in paragraph (a)(ii), (b), (c), (d) and (e) of subregulation (1).
- (3) If a magistrate who is on official duty away from his headquarters or stationed in a foreign country, dies, including a member of his family accompanying him for official purposes, these additional expenses (excluding burial expenses) that result from the death at another place than his headquarters or in the Republic, shall be paid.
- (4) The conditions, guide-lines, procedure and requirements in respect of the payment of the expenses referred to in this regulation shall be determined by the Director-General.

(5) The Director-General may lengthen the periods and increase the amounts referred to in this regulation respectively.

### **Compensation for additional subsistence expenses**

24.(1) A magistrate -

- (a) who is stationed and resident at headquarters -
  - (i) where no school facilities are available locally for his child and where there is also no free transportation to a nearby school; and
  - (ii) where school facilities, if they exist, are not accessible, because of the language medium used for tuition; and
  - (iii) that are situated more than 32 km per single journey from the nearest accessible school, and whose dependent child is in boarding-school elsewhere than at his headquarters or lodges elsewhere;
- (b) who is stationed in a self-governing territory as defined by section 38 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or in Transkei, Bophuthatswana, Venda, Ciskei, Botswana, Lesotho, Swaziland or Namibia, and resident there and whose dependent child is in boarding-school in the Republic, or lodges elsewhere, in order to attend school,

shall receive the allowance referred to in subregulation (2).

(2) Compensation shall be paid for the living expenses that arise as referred to in subregulation (1) by paying to a magistrate 50 % of the hostel or accommodation expenditure fees that he actually and of necessity incurs with regard to each child.

(3) The amount that may be paid as compensation in accordance with subregulation (2) shall be limited to -

- (a) not more than 50 % of the boarding-school fees of the State boarding-school where his child resides; or

- (b) not more than 50 % of the boarding-school fees of a State boarding-school in the region where such magistrate's headquarters is, if the child lodges privately or is resident in a private boarding-school; or
  - (c) an amount that the Director-General considers reasonable if there is no State boarding-school in the region.
- (4) Boarding-school fees and accommodation expenditure fees shall include the renting of accommodation, and meals, refreshments and laundry.
- (5) Claims for the payment of a boarding-school allowance shall be accompanied by the necessary documentary proof.
- (6) A claim for not more than one school year, running from 1 January to 31 December, may be considered at a time.
- (7) If a magistrate, after he has claimed the allowance referred to in this regulation for a specific period, withdraws his child for whatever reason from the boarding-school or place of accommodation expenditure and for the reason receives a *pro rata* repayment of boarding-school or accommodation expenditure fees, he shall pay 50% of such repayment to the Director-General, who shall deposit it into the Consolidated Revenue Fund.
- (8) The Director-General may -
- (a) subject to the provisions of this regulation, approve or reject applications on the grounds of the factual position; and
  - (b) determine the maximum reasonable compensation if State boarding-school fees do not exist in a particular case.

## PART V: MISCONDUCT

### **General provisions**

25. A magistrate may be accused of misconduct if he -
- (a) is found guilty of an offence;
  - (b) contravenes any provision of these regulations;
  - (c) contravenes the Code of Conduct, if there is one;
  - (d) is negligent or indolent in the carrying out of his duties;
  - (e) uses intoxicants or stupefying drugs excessively;
  - (f) accepts, without the permission of the Minister, or demands in respect of the carrying out of or the failure to carry out his duties any commission, fee or pecuniary or other reward, not being the emoluments payable to him in respect of his duties, or fails to report to the Minister the offer of such a commission, fee or reward;
  - (g) misappropriates or make improper use of any property of the State;
  - (h) absents himself from his office or duty without leave or valid cause;
  - (i) makes a false or incorrect statement, knowing it to be false or incorrect, with a view to obtaining any privilege or advantage in relation to his official position or his duties or to the prejudice of the administration of justice; or
  - (j) refuses to execute a lawful order.

**[Procedure of preliminary investigation and investigation**

**26. (1) If a magistrate is accused of misconduct, the Commission may appoint a magistrate or a person (hereinafter called the investigating officer) to conduct a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate: Provided that, if the Commission is of the opinion that there is *prima facie* evidence to support the charge, the Commission may charge the magistrate concerned in writing with misconduct without the said preliminary investigation.**

**(2) After the conclusion of the preliminary investigation referred to in subregulation (1), the investigating officer shall recommend to the Commission**

whether or not the magistrate concerned should in his opinion be charged, and if so, what in his opinion the contents of the charge concerned should be.

(3) If the Commission is of the opinion that there are sufficient grounds for a charge of misconduct against the magistrate concerned, the Commission may, in writing, charge the magistrate with misconduct.

(4) A charge referred to in subregulation (1) or (3) shall contain or shall be accompanied by a direction calling upon the magistrate charged to send or deliver within a reasonable period specified in the direction to a person likewise specified, a written admission or denial of the charge and a written explanation regarding the misconduct with which he is charged.

(5) If the magistrate charged admits that he is guilty of the charge, he shall be deemed to have been found guilty of misconduct as charged.

(6) If the magistrate charged in terms of subregulation (1) or (3) -

(a) denies the charge; or

(b) fails to comply with the direction referred to in subregulation (4),

the Commission shall appoint a magistrate or person (hereinafter called the presiding officer) to preside at the investigation, and a magistrate or person to lead evidence: Provided that the Commission may dispense with the appointment of a presiding officer and establish a committee to conduct the investigation, in which case a reference in this regulation to "presiding officer" shall be deemed to be a reference to such a committee.

(7) The magistrate or person who leads the evidence contemplated in subregulation (6) may, for the purposes of the investigation -

(a) summon any person, who, in his opinion may be able to give material information concerning the subject of the investigation, or who he

- suspects or believes has in his possession or custody or under his control any book, document or object which has any bearing on the subject of the investigation, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object;
- (b) retain a book, document or object referred to in paragraph (a) for the duration of the investigation;
  - (c) lead evidence and arguments in support of the charge and cross-examine witnesses; and
  - (d) call upon and administer an oath to or accept an affirmation from any person present at the investigation who was or might have been summonsed in terms of paragraph (a), and question him and order him to produce any book, document or object in his possession or custody or under his control that he suspects or believes to have a bearing on the subject of the investigation.
- (8) The law relating to privilege, as applicable to a witness summonsed to give evidence in a civil trial before a court of law or to produce a book, document or object, shall *mutatis mutandis* apply in relation to the examination of, or the production of any book, document or object to the presiding officer by, any person called as a witness in terms of this regulation.
- (9) At an investigation the magistrate charged shall have the right -
- (a) to be personally present, to be assisted or represented by another person, to give evidence and, either personally or through a representative -
    - (i) to be heard;
    - (ii) to call witnesses;
    - (iii) to cross-examine any person called as a witness in support of the charge; and
    - (iv) to have access to documents produced in evidence;

- (b) notwithstanding a denial or failure by him referred to in subregulation (6), to admit at any time that he is guilty of the charge, whereupon he shall be deemed to be guilty of the misconduct as charged; and**
- (c) if the misconduct with which he is charged amounts to an offence of which he was convicted by a court of law, to show cause why, in his opinion, he is not guilty of misconduct.**

**(10) At an investigation the presiding officer has, at the commencement of the proceedings or later, the right to require from the magistrate charged a full explanation of his defence on the charge and to question him in clarification about that.**

**(11) After the conclusion of the investigation, the presiding officer shall notify the Commission and the magistrate charged of his finding and recommendation and supply a copy of the minutes to the Commission.**

**(12)(a) The recommendation of the presiding officer will be to the effect that the magistrate charged be found guilty or not guilty by the Commission of the misconduct as charged.**

**(b) If the presiding officer recommends that the magistrate be found guilty of the misconduct as charged, or if the magistrate charged admits that he is guilty of the charge, the presiding officer or the magistrate charged, as the case may be, shall state or furnish to the Commission any aggravating or mitigating circumstances, as well as any written comment by the magistrate charged.**

**(13) The Commission may, for the purposes of the determination of aggravating or mitigating circumstances, request any information from any person or officer in the Public Service.**

**(14) After consideration of the relevant documents, the Commission shall make a recommendation to the Minister and submit to him, together with its recommendation, all the relevant documents with regard to the investigation, as well as the finding and recommendation of the presiding officer: Provided that if the magistrate charged lodges representations in terms of subregulation (15), any recommendation or documents relating to aggravating or mitigating circumstances shall not be submitted to the Minister until the Commission has made a finding regarding the representations of the magistrate charged.**

**(15) If the magistrate charged is found guilty of misconduct by the presiding officer, the magistrate charged may, if he feels aggrieved because of the finding of the presiding officer, address his representations to the Commission in writing within 21 working days after conviction, giving his grounds of his representations, and he shall forward a copy of this notice of representation, together with his grounds of representations, to the presiding officer.**

**(16) Within 21 working days after receipt of the notice of representations referred to in subregulation (15) the presiding officer shall forward his reasons for conviction to the Commission.**

**(17) If the magistrate charged is found guilty or has admitted that he is guilty, and the Minister does not suspend or relieve him from office for misconduct, the Minister may impose one or more of the following sentences:**

- (a) Caution or reprimand him;**
- (b) withhold his translation to a higher salary scale or promotion to a higher post for a period not exceeding five years;**
- (c) transfer him to other headquarters;**
- (d) impose a fine not exceeding R 10 000 on him; and**
- (e) postpone his decision under paragraphs (a) to (d), with or without conditions, for a period of 12 calendar months.**

(18) A person summonsed as witness to appear before a presiding officer for the purposes of attending the investigation referred to in subregulation (6) shall receive allowances in accordance with the tariff of allowances prescribed by Government Notice No. R.2596 of 1 November 1991 as if he was a witness in criminal proceedings.

(19) A summons shall be issued on a form prescribed by the Commission and shall be served in a way determined by the Commission.

(20) The investigation shall take place *in camera* unless the presiding officer orders otherwise.

(21) Evidence obtained during the preliminary investigation referred to in subregulation (1) which is not disputed by the magistrate may be admitted at the investigation referred to in subregulation (6).

#### **PART VI: INCAPACITY TO CARRY OUT DUTIES EFFICIENTLY**

##### **Procedure of investigation into magistrate's incapacity**

27.(1) The Minister or the Commission may order that an investigation be held into the capacity of a magistrate to carry out his duties of office efficiently.

(2) An investigation referred to in subregulation (1) shall be held as soon as possible by a magistrate or any person designated by the Minister or the Commission and such magistrate or person shall have the powers referred to in regulation 26(7).

(3) The magistrate with regard to whom the investigation referred to in subregulation (1) is to be held -

- (a) shall in writing be informed by the person who is to conduct the investigation of the date, time and place of the investigation; and**
- (b) shall have the right -**
  - (i) to a statement in writing of the grounds upon which it is alleged that he does not have the capacity to carry out his duties of office in an efficient manner;**
  - (ii) to be present at the investigation;**
  - (iii) to be assisted or represented by another person;**
  - (iv) to testify; and**
  - (v) either personally or through a representative, to -**
    - (aa) be heard;**
    - (bb) call witnesses;**
    - (cc) cross-examine any person who is called as a witness in support of the said allegations; and**
    - (dd) have access to documents which were produced as evidence.**

**(4) The magistrate in respect of whom the investigation is held, shall answer relevant questions of the person who conducts the investigation.**

**(5) After completion of the investigation referred to in subregulation (1) the person who conducted the investigation shall make a finding and inform the magistrate concerned and the chairman of the Commission of the finding.**

#### **Procedure after a finding of incapacity**

**28.(1) If the person who conducts the investigation in terms of regulation 27 finds that the magistrate concerned does not have the capacity to carry out his duties of office in an efficient manner -**

- (a) he shall furnish the magistrate concerned with a statement, in writing, of his finding and the reasons for the finding; and**

- (b) he shall forward without delay to the chairman of the Commission, the record of the proceedings of the investigation and all documentary evidence or certified copies thereof admitted at the investigation, as well as a written statement of his reasons for the finding and any observations on the case which he may desire to make.
- (2) The magistrate concerned may, within 10 working days after the date on which he was notified of the finding, submit to the chairman of the Commission written comment regarding the findings and the reasons therefor.
- (3) The chairman of the Commission shall forward to the Minister any documents regarding the investigation, together with the comment of the magistrate referred to in subregulation (2), if any, and the recommendation of the Commission.
- (4) The Minister may personally order that a further investigation be conducted into the magistrate's capacity to carry out his duties of office.
- (5) The Minister shall without delay inform the chairman of the Commission and the magistrate concerned of his decision.

## **PART VII: REMOVAL FROM OFFICE ON ACCOUNT OF CONTINUED ILL-HEALTH**

### **Procedure of investigation**

**29.(1) The Minister or the Commission may order that an investigation be held regarding the removal of a magistrate from office on account of continued ill-health.**

- (2) The Minister shall before the commencement of the investigation referred to in subregulation (1) inform the magistrate of the investigation.
- (3) The magistrate in respect of whom the investigation referred to in subregulation (1) is conducted, shall without delay after receipt of the notice of the investigation submit a medical report from a medical practitioner of his own choice to the Minister or the Commission, as the case may be.
- (4) The Minister or Commission may order that the magistrate subject himself to a medical examination by a medical practitioner designated by the Minister or Commission, where after the medical practitioner shall submit a medical report to the Commission.
- (5) The costs of the medical examinations referred to in subregulations (3) and (4) shall be paid by the State.
- (6) After considering the medical report, together with any relevant information, the Commission shall make a recommendation to the Minister.
- (7) The Commission shall provide to the magistrate concerned a copy of its recommendation referred to in subregulation (6), together with a copy of the medical report referred to in subregulation (4).
- (8) The magistrate may within 15 days after receipt of the recommendation and medical report referred to in subregulation (7), submit written comment thereon to the Minister.
- (9) The Minister shall consider the medical reports and the recommendation of the Commission and make a final decision.]

**Procedure for preliminary investigation and misconduct hearing**

26.(1) If a magistrate is accused of misconduct, the Commission may appoint a magistrate or an appropriately qualified person (hereinafter called the investigating officer) to conduct a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate: Provided that, if the Commission is of the opinion that there is *prima facie* evidence to support the charge, the Commission may charge the magistrate concerned in writing with misconduct without the said preliminary investigation.

(2) The investigating officer appointed in terms of subregulation (1) may, for the purposes of the preliminary investigation -

- (a) summon any person who, in his or her opinion may be able to give material information concerning the subject of the investigation, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the investigation, to appear before the investigating officer at the time and place specified in the summons, to be questioned or to produce the book, document or object; and
- (b) retain a book, document or object referred to in paragraph (a) for the duration of the investigation.

(3) After the conclusion of the preliminary investigation contemplated in subregulation (1), the investigating officer shall recommend to the Commission whether or not the magistrate concerned should be charged, and if so, what the contents of the charge in question should be.

(4) If, after the conclusion of the preliminary investigation, the Commission is of the opinion that -

- (a) there are sufficient grounds for a charge of misconduct against the magistrate concerned and the allegations are of such a serious nature that they may justify the

removal from office of the magistrate, the Commission may, in writing, charge the magistrate with misconduct;

- (b) the allegations are not of such a serious nature, the Commission shall issue directions, excluding the institution of misconduct proceedings, as to the manner in which the matter is to be dealt with.

(5) A charge contemplated in subregulation (1) or (4)(a) shall be accompanied by an invitation to the magistrate charged to send or deliver within a reasonable period specified in the invitation to a person likewise specified, a written explanation regarding the misconduct with which he or she is charged in order to establish which allegations are admitted and which allegations are disputed.

(6) If the Commission decides that a magistrate should be subjected to a misconduct hearing, the Commission shall appoint –

- (a) a magistrate (hereinafter called the presiding officer) to preside at that hearing;  
and
- (b) a magistrate or an appropriately qualified person to lead evidence at that hearing.

(7)(a) The magistrate or person appointed in terms of subregulation (6)(b) must in writing notify the magistrate charged of the date, time and venue of his or her hearing.

(b) The magistrate or person appointed in terms of subregulation (6)(b) or a person designated by him or her, must personally hand the notice contemplated in paragraph (a) to the magistrate charged.

(c) The magistrate charged must immediately acknowledge receipt of the notice contemplated in paragraph (a).

(d) If a magistrate charged refuses to sign receipt of a notice contemplated in paragraph (a), the notice must be handed to that magistrate charged in the presence of

any witness, who must sign in confirmation that the notice was handed to the magistrate charged in his or her presence.

(8) The presiding officer shall, at the commencement of a misconduct hearing -

- (a) inform the magistrate charged about his or her right to remain silent; and
- (b) ascertain from the magistrate charged, which allegations are disputed and which allegations are admitted.

(9) A presiding officer may, if the magistrate charged admits at any time that he or she is guilty of the charge, question the magistrate, and if the presiding officer is satisfied that the magistrate is guilty as charged, and after confirming that the version deposed to by the magistrate charged is in accordance with the facts held by the person referred to in subregulation (6)(b), the presiding officer shall make a finding to the effect that the magistrate charged is guilty.

(10) A magistrate or person appointed in terms of subregulation (6)(b) may, for the purposes of a misconduct hearing -

- (a) summon any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object;
- (b) retain a book, document or object referred to in paragraph (a) for the duration of the hearing;
- (c) lead evidence and arguments in support of the charge and cross-examine witnesses; and
- (d) call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been summoned in terms of paragraph (a), and question him or her and order him or her to produce any book,

document or object in his or her possession or custody or under his or her control that he or she suspects or believes to have a bearing on the subject of the hearing.

(11) The law relating to privilege, as applicable to a witness summoned to give evidence in a civil trial before a court of law or to produce a book, document or object, shall *mutatis mutandis*, apply in relation to the examination of, or the production of any book, document or object to the presiding officer by, any person called as a witness in terms of this regulation.

(12) At a misconduct hearing the magistrate charged shall -

(a) have the right –

(i) to be personally present and to be assisted or represented by another person;

(ii) to remain silent;

(iii) to give evidence; and

(iv) either personally or through a representative –

(aa) to be heard;

(bb) to call witnesses;

(cc) to cross-examine any person called as a witness in support of the charge;

and

(dd) to have access to documents produced in evidence; and

(b) show cause why he or she is not guilty of misconduct, if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law.

(13) The presiding officer may, at any stage of the hearing, on own accord or on request of the magistrate charged, summon or cause to be summoned any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which

has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object.

(14)(a) A presiding officer may order that a misconduct hearing be proceeded with even if the magistrate charged is absent from the proceedings or any part thereof, subject thereto that the presiding officer must be satisfied that proper notice of the hearing has been handed to the magistrate charged as contemplated in subregulation (7).

(b) A magistrate contemplated in paragraph (a), may –

- (i) at any stage, prior to a finding, inspect the record of proceeding of a hearing; and
- (ii) if he or she was not assisted or represented at the hearing, with the permission of the presiding officer examine any witness who testified during his or her absence.

(15) After the conclusion of the evidence and the arguments or address at a misconduct hearing, the presiding officer shall on a balance of probabilities make a finding as to whether the magistrate charged is guilty or not guilty of the misconduct as charged.

(16)(a) A presiding officer shall provide his or her reasons for any finding.

(b) The presiding officer shall give the magistrate charged and the magistrate or person who led the evidence at a misconduct hearing an opportunity to present any aggravating or mitigating factors.

(17) The presiding officer at a misconduct hearing may if a finding of guilty has been made –

- (a) impose one of the following sanctions or any combination thereof on the magistrate charged:
- (i) Caution or reprimand the magistrate;
  - (ii) specify the manner in which he or she should be cautioned or reprimanded;
  - (iii) direct the magistrate to tender an apology in a manner specified by the presiding officer; or
  - (iv) postpone the imposition of a sanction for a period not exceeding 12 months with or without conditions which may include counselling, treatment or attendance of a training programme, or
- (b) recommend to the Commission that the magistrate concerned be removed from office as contemplated in section 13 of the Act.

(18) After the conclusion of a misconduct hearing the presiding officer shall inform or notify the magistrate concerned of his or her right to lodge representations in terms of subregulation (20).

(19) After the conclusion of a misconduct hearing the presiding officer shall –

- (a) inform or notify the Commission and the magistrate concerned of -
- (i) his or her finding in relation to the charge and the reasons therefor;
  - (ii) his or her finding in relation to the aggravating or mitigating factors presented at the hearing;
  - (iii) the sanction imposed and the reasons therefor or his or her recommendation in terms of subregulation (17)(b) and the reasons therefor, and
- (b) furnish the Commission with a copy of the record of proceedings.

(20)(a) If a recommendation is made in terms of subregulation (17)(b), the magistrate concerned may lodge representations with the Commission.

- (b) The representations contemplated in paragraph (a) must –
- (i) be in writing;

- (ii) be lodged with the Commission within 21 working days after the findings of the presiding officer has come to the notice of the magistrate concerned; and
- (iii) set out the grounds for his or her representations.

(c) The magistrate concerned shall forward a copy of the notice of the representations, together with the grounds for his or her representations to the presiding officer.

(21) Within 21 working days after receipt of the notice of representations contemplated in subregulation (20), the presiding officer may forward any additional reasons for his or her recommendation to the Commission and the magistrate concerned.

(22) After consideration of the relevant documents referred to in subregulation (19), the Commission may –

- (a) recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act in which case the Commission shall submit to Parliament all the relevant documents with regard to that misconduct hearing: Provided that if the magistrate charged lodges representations in terms of subregulation (20) any recommendation or documentation shall not be submitted to Parliament until the Commission has made a finding regarding the representations; or
- (b) if the Commission is of the opinion that the magistrate concerned should not be removed from office, impose any of the sanctions contemplated in subregulation (17)(a).

(23) A person summoned as a witness to appear before an investigating officer or a presiding officer for the purposes of a preliminary investigation, or a misconduct hearing shall receive allowances in accordance with the tariff of allowances prescribed under section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), by notice in the *Gazette*.

(24) A summons in respect of a preliminary investigation or a misconduct hearing shall be issued on a form prescribed by the Commission and shall be served in a manner determined by the Commission.

(25) A misconduct hearing shall be in public unless the presiding officer determines otherwise.

(26) Evidentiary material obtained during a preliminary investigation which is not disputed by the magistrate concerned may, upon mere production thereof, be admitted at a misconduct hearing.

## **PART VI: INCAPACITY TO CARRY OUT DUTIES EFFICIENTLY**

### **Procedure for investigation into magistrate's incapacity**

27.(1) The Commission may order that an investigation be held into the capacity of a magistrate to carry out his or her duties of office efficiently.

(2) An incapacity investigation shall be held as soon as possible by a magistrate or any person designated by the Commission and such magistrate or person shall have the powers referred to in regulation 26(10).

(3) The magistrate with regard to whom an incapacity investigation is to be held -

- (a) shall in writing be informed by the person who is to conduct the investigation of the date, time and place of the investigation; and
- (b) shall have the right -

- (i) to a statement in writing of the grounds upon which it is alleged that he does not have the capacity to carry out his or her duties of office in an efficient manner;
- (ii) to be present at the investigation;
- (iii) to be assisted or represented by another person;
- (iv) to testify; and
- (v) either personally or through a representative, to -
  - (aa) be heard;
  - (bb) call witnesses;
  - (cc) cross-examine any person who is called as a witness in support of the said allegations; and
  - (dd) have access to documents which were produced as evidence.

(4) The magistrate in respect of whom the investigation is held, shall answer relevant questions of the person who conducts the investigation.

(5) After completion of an incapacity investigation the person who conducted the investigation shall make a finding and inform the magistrate concerned and the chairperson of the Commission of the finding.

#### **Procedure after a finding of incapacity**

28.(1) If the person who conducts an incapacity investigation finds that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner -

- (a) he or she shall furnish the magistrate concerned with a statement, in writing, of his or her finding and the reasons for the finding; and
- (b) he or she shall forward without delay to the chairperson of the Commission the record of the proceedings of the investigation and all documentary evidence or certified copies thereof admitted at the investigation, as well as a written statement of his or her reasons for the finding and any observations on the case which he or she may desire to make.

(2) The magistrate concerned may, within 10 working days after the date on which the finding of an incapacity hearing has come to his or her notice, submit to the chairperson of the Commission written comment regarding the findings and the reasons therefor.

(3)(a) The Commission shall consider the relevant documents regarding an incapacity investigation, together with the comments of the magistrate contemplated in subregulation (2), if any.

(b) The Commission shall, if it is as a result of an incapacity investigation, of the opinion that a magistrate should be removed from office due to incapacity, recommend to Parliament that the magistrate be removed from office as contemplated in section 13 of the Act.

## **PART VII: REMOVAL FROM OFFICE ON ACCOUNT OF CONTINUED ILL-HEALTH**

### **Procedure of investigation**

29.(1) The Commission may order that an investigation be held regarding the removal of a magistrate from office on account of continued ill-health.

(2) The Commission shall before the commencement of a health investigation inform the magistrate of that investigation.

(3) The magistrate in respect of whom a health investigation is conducted, shall without delay after receipt of the notice of the investigation submit a medical report from a medical practitioner of his or her own choice to the Commission.

(4) In addition to subregulation (3), the Commission may order that a magistrate subject himself or herself to a medical examination by a medical practitioner designated by the Commission, whereafter that medical practitioner shall submit a medical report to the Commission.

(5) The costs of the medical examinations contemplated in subregulations (3) and

(4) shall be paid by the State.

(6)(a) If the Commission, after considering a medical report in terms of this regulation, together with any relevant information, is of the opinion that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner due to continued ill-health, the Commission shall -

- (i) furnish the magistrate concerned with a statement, in writing, of its view and the reasons therefor; and
- (ii) forward without delay to the magistrate concerned, the medical reports and any other relevant documents or certified copies thereof which are not in the possession of the magistrate concerned.

(b) The magistrate concerned may, within 10 working days after the date on which the opinion of the Commission has come to his or her notice, submit to the chairperson of the Commission written comment regarding the opinion.

(7)(a) The Commission shall consider the medical reports, together with the comments of the magistrate contemplated in subregulation (6)(b), if any.

(b) The Commission shall, if it is of the opinion that the magistrate concerned should be removed from office due to continued ill-health, recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act.

## **PART VIII: VACATION OF OFFICE ON ACCOUNT OF CONTINUED ILL-HEALTH**

### **Procedure for vacation of office**

30. (1) A magistrate who in terms of section 13(5)(a)(i) of the Act, makes a request to vacate his office shall submit such request in writing, with full particulars in support thereof, which request shall be directed to the Minister and forwarded to the Director-General for submission to the Minister.

(2) The written request referred to in subregulation (1) shall be accompanied by a medical report from a medical practitioner of the magistrate concerned's own choice setting out the medical history, including the present medical condition, of the magistrate.

(3) The Minister may, after receipt of the request referred to in subregulation (1) and the medical report referred to in subregulation (2), order that the magistrate subject himself to a medical examination by a medical practitioner designated by the Minister, where after the medical practitioner shall submit a medical report to the Minister.

(4) The Minister shall consider the request and make a final decision.

(5) The costs incidental to the medical examinations referred to in subregulations (2) and (3) shall be paid by the magistrate concerned.

## **PART IX: COMPLAINTS AND GRIEVANCES OF MAGISTRATE**

### **Procedure in respect of investigation of complaints and grievances**

31.(1) If a magistrate is dissatisfied or discontented with an official act or omission, he may report the matter, in writing, to his head of office or if he does not have a head of office, to the Commission giving full particulars of the complaint or grievance.

(2) The head of office referred to in subregulation (1) or the Commission, as the case may be, investigates the matter and informs the magistrate concerned, in writing, of the result.

(3)(a)(i) If the head of office fails to conduct the investigation within 14 days in terms of subregulation (2), the magistrate concerned may, within 14 working days after the expiry of the period referred to in the subregulation submit his complaint of grievance, in writing, to the Commission; or

- (ii) if the magistrate concerned is dissatisfied with the outcome of the investigation by the head of office referred to in subregulation (2), he may, within 14 working days after receipt of the result submit his complaint or grievance, in writing, to the Commission.
- (b) On receipt of the complaint or grievance concerned the Commission shall determine the manner of handling thereof and may designate a magistrate or person to investigate that complaint or grievance.
- (c) After the complaint has been investigated, the magistrate or the person who conducts the investigation shall submit his recommendation and all the relevant documents concerning the matter to the Commission.
- (d) The Commission may after receipt of the recommendation referred to in paragraph (c) order such further investigation as it may deem fit.

### **Decision of Commission in respect of complaints and grievances**

32. (1) After completion of the investigation with regard to the complaint or grievance referred to in regulation 31 of the Commission shall -
- (a) take such steps as it may deem fit with regard to the complaint or grievance concerned; and
  - (b) in writing, inform the magistrate concerned, accordingly.
- (2) If the magistrate concerned is not satisfied with the steps referred to in subregulation (1)(a), he may within 10 working days after receipt of the notice referred to in subregulation (1)(b), in writing, submit to the Commission the reasons for his dissatisfaction, together with copies of the relevant documentation regarding his complaint or grievance, with the request that it must be submitted to the Minister.
- (3) The Commission then forwards the relevant documents to the Minister.

### **Decision of Minister in respect of complaints and grievances**

33. The Minister shall -

- (a) make a decision regarding the complaint or grievance concerned after consideration of all the relevant documents and if he deems it expedient he may order any further investigation; and
- (b) advise the magistrate concerned, in writing, of his decision.

## **PART X: ABSCONDMENT**

### **General provisions**

34. (1) If a magistrate is absent without leave or valid reason from his office or duty for a period of 30 days or longer the Commission shall be informed accordingly without delay by the Director-General, and it shall be deemed that the magistrate has absconded and made himself guilty of misconduct.

(2) After the Commission has been informed in terms of subregulation (1), it shall make a recommendation to the Minister regarding the suspension of the magistrate in accordance with section 13(3) of the Act.

## **PART XI: OFFICIAL OFFICE HOURS**

### **Office hours**

35. The office hours of a magistrate shall be from Monday to Friday, from 07:45 to 16:15, with a lunch interval of a maximum of 45 minutes.

### **Overtime and overtime remuneration**

36.(1) Notwithstanding the provisions of regulation 35, a magistrate's head of office may require him to perform official service on any day of the week or at any time of the day or night or to be present at his normal working place or elsewhere for such service.

(2) A magistrate who, with regard to after-hours bail and other urgent applications and after -hours confessions or trials, performs official service referred to in

subregulation (1) shall be paid overtime remuneration in accordance with the basis of calculation in Schedule D.

### **Absence during office hours**

37. A magistrate may not be absent from his place of duty during the office hours referred to in regulation (35) without the consent of his head of office.

## **PART XIII: LEAVE AND LEAVE GRATUITY**

### **Leave**

38. The provisions contained in Chapter C of the Public Service Regulations and chapter D.II of the Public Service Staff Code shall, *mutatis mutandis* apply to magistrates: Provided that any leave shall be subject to approval by the Minister or a person designated by him: Provided further that any reference in those regulations or code to “officer” or “employee” shall be interpreted as a reference to a “magistrate” and that any reference to “Commission for Administration”, shall be interpreted as a reference to “Commission”.

### **Leave gratuity**

39.(1) The provisions contained in Chapter D.VIII of the Public Service Code shall *mutatis mutandis* apply to magistrates.

(2)(a) A magistrate may, after 20 years’ uninterrupted service in the Public Service of the Republic, or in the office of magistrate or both, discount a maximum of 10 days of his available vacation leave.

(b) A magistrate may, after 30 years’ uninterrupted service in the Public Service of the Republic, or in the office of magistrate or both, discount 20 days of his available vacation leave, or 10% of his available vacation leave, whichever is the most.

**PART XIII: OCCUPATION OF OFFICIAL QUARTERS****General provisions**

40.(1) A magistrate may make use of official quarters if such quarters are available.

(2) If a magistrate makes use of official quarters, the provisions of Chapter H of the Public Service Regulations and Chapter D.VII of the Public Service Staff Code shall *mutatis mutandis* apply: Provided that any reference in the provisions to “officer” or “employee” shall be interpreted as a reference to “magistrate”.

**PART XIV: RECOGNITION OF PROFESSIONAL ASSOCIATIONS****General provisions**

41. Any professional society representative of the majority of magistrates or regional magistrates or both shall be recognised.

**PART XV: GOVERNMENT MOTOR TRANSPORT****Government motor transport**

42. A motor vehicle which is the property of the State may be allocated to a magistrate for use on official journeys subject to the same provisions under which such a vehicle is allocated to officers in the service of the State or under such amended or other conditions as the Commission and the Government Department that supplies the vehicle may agree.

**PART XVI: SUBSIDISED TRANSPORT****Subsidised transport for certain magistrates**

43. A subsidised vehicle may be allocated to a regional magistrate (excluding a regional court president), a senior civil magistrate or a family magistrate appointed in terms of section 9 of the Magistrates' Court Act, 1944, subject to the same conditions under which such a vehicle is allocated to officers in the service of the State or under such amended or other conditions as the Commission and the Government Department that administers the supply of such vehicles, may agree.

**PART XVII: TRANSPORT BETWEEN RESIDENCE AND PLACE OF DUTY****Authorisation for transport between residence and place of duty**

44. (1) The Director-General may in his discretion authorise the transportation of a magistrate between his residence and place of duty with State transport when exceptional transport problems are experienced in rendering a service at a specific place of duty and it is essential that State transport be supplied: Provided that an official journey between a residence and place of duty as referred to in Chapter D.IV, Part II/3, of the Public Service Staff Code and the journeys between a temporary residence and temporary place of duty as referred to in Chapter D.IV, Part II/4, of the Public Service Staff Code shall be excluded from this regulation.

(2) An application for State transport referred to in subregulation (1) shall be made on the form prescribed in Schedule C.

**Monthly tariff payable**

45. (1) If a magistrate makes use of State transport between his residence and place of duty he or she shall pay to the Director-General the monthly amount as prescribed from time to time for the Public Service.

(2) The Director-General shall pay the amount referred to in subregulation (1) into the Consolidated Revenue Fund.

**Changed circumstances**

46. A magistrate to whom State transport referred to in regulation 44 is supplied shall forthwith notify the Director-General in writing of any changed circumstances which might have an influence on his position.

**PART XVIII: OFFICIAL JOURNEYS****General provisions**

47. (1) All official journeys of which itineraries are submitted shall be authorised by the head of office who shall ensure that the journeys are necessary and in the interest of the administration of justice.

(2) The head of office referred to in subregulation (1) shall consider each application for an official journey, having regard to costs, availability of transport, route, timespan and any other relevant circumstances.

### **Transport**

48. A magistrate who renders official service away from his station or service after hours at his station-

- (a) shall if he is in possession of a subsidised vehicle referred to in Part XVI or a motor vehicle under the motor vehicle financing scheme, for purposes of an official journey as referred to in regulation 47, use such transport: Provided that the Director-General may authorise such magistrate to travel in any other manner referred to in this regulation in which instance paragraph (b) shall be applicable;
- (b) may if he is not in possession of a vehicle or motor vehicle referred to in paragraph (a), for the purposes of the forward and return journey to and from the place where he so renders service, use any available public transport and may -
  - (i) make use of first-class railway transport;
  - (ii) with the consent of the Director-General use economy class air transport;
  - (iii) in the case of any other public transport, where applicable, travel in the class that his head of offices approve.
- (c) may also, subject to the provisions of paragraph (b) and the provisions of Part XVI, for the purposes of the forward and return journey to and from the place where he so renders service, use State transport; or
- (d) may, if he is not in possession of a vehicle or motor vehicle referred to in paragraph (a), for the purposes of a forward and return journey to and from the place where he so renders service with the approval of his head of office, use private motor vehicle transport, in which case he shall be entitled to a transport allowance as prescribed from time to time for the Public Service.

### **Subsistence allowance**

49(1) A magistrate who renders official service away from his station and -

- (a) is obliged to be absent for longer than 24 hours from his or her headquarters or permanent place of residence shall be entitled to the allowances as prescribed from time to time for the Public Service; or
- (b) is obliged to be absent from his headquarters for less than 24 hours, shall be entitled to the reasonable actual expenses incurred if the necessary corroborative documents accompany the claim, or to the expenses as prescribed from time to time for the Public Service.

(2) A magistrate who renders official service outside the boundaries of the Republic shall, in addition to the allowance referred to in subregulation (1), be entitled to such allowance as may be determined by the Minister in his case.

### **Recruitment allowance**

50. A magistrate who performs specific duties assigned to him by the Minister after consultation with the Commission in terms of section 14 of the Act may receive a non-pensionable recruitment allowance, calculated in accordance with the undermentioned formula for each day of absence from his headquarters:

Number of full days absent from headquarters	X	15 % of the magistrate's salary
365	1	

### **Submitting of claims**

51.(1) All claims for the payment of allowances under this Part shall specify the nature of service, the precise time of departure and arrival and such other information as may be necessary to calculate the amount payable.

- (2) A claim referred to in subregulation (1) shall -
  - (a) be accompanied by the authorisation referred to in regulation 49(1) and any other relevant corroborative documents; and
  - (b) be signed by the magistrate concerned and his head of office, and certified as correct.

(3) All claims for the payment of allowances under this Part shall be submitted to the Director-General.

### **Economising**

52. If a magistrate has travelled in a manner which results in higher travelling expenses or which involves a longer period of time than was necessary, he shall -

- (a) be restricted by his head of office in respect of the amount which may be paid to him to settle his travelling costs to the amount he would have been entitled to if he had complied with the provisions of regulation 48;
- (b) refund unnecessary expenses incurred if he travelled by State motor vehicle transport; and
- (c) cover every working day by which the normal travelling time was exceeded by leave of absence.

## **PART XIX: FIDELITY SCHEME FOR HOUSING LOANS**

### **Fidelity scheme for housing loans**

53. The fidelity scheme for housing loans for magistrates shall be the fidelity scheme which is applicable to a Deputy Director in the Public Service: Provided that the basis of calculation shall be the magistrate's gross salary as on the date of application for a guarantee.

## **PART XX: CREATION OF POSTS**

### **Creation of posts**

54. The Minister, in consultation with the Commission, shall create posts for all magistrates and determine the number, grading, regarding, naming, renaming or transformation of such posts

### **Code of conduct for Magistrates**

54A. The Code of conduct for Magistrates is the Code of conduct contained in Schedule E of the Regulations.

### **CHAPTER III**

#### **REGULATIONS IN RESPECT OF JUDICIAL OFFICERS OTHER THAN MAGISTRATES**

##### **Conditions of service and benefits**

55. Any act, measure, arrangement or direction which is applicable to an officer in the Department shall *mutatis mutandis* apply to any person who has been appointed in a temporary or acting capacity or as assistant-magistrate as a judicial officer in terms of section 9 of the Magistrates' Courts Act.

### **CHAPTER IV**

#### **SHORT TITLE**

##### **Short title and commencement**

56. These regulations shall be called the Regulations for Judicial Officers in Lower Courts, 1994, and shall come into operation on 11 March 1994.

