



Government Gazette

REPUBLIC OF SOUTH AFRICA

Regulation Gazette

No. 7773

Vol. 459

Pretoria

26

September 2003

No. 25485



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GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

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

No. R. 1339

26 September 2003

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

The Minister for Justice and Constitutional Development has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), on the recommendation of the Magistrates Commission, made the regulations in the Schedule.

SCHEDULE

Definitions

1. 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 and R. 1498 of 17 December 1999.

Amendment of Classification of the Regulations

2. The Classification of the Regulations is hereby amended by the deletion of the expressions:

(a) "PART III: PROMOTION

16. General promotion measures

17. Seniority date

18. Promotion periods

19. Evaluation procedure

20. Priority lists

21. Promotion date"; and

(b) "SCHEDULE B

Form

No.

1. Evaluation questionnaire: Magistrates other than Senior Magistrates

2. Evaluation questionnaire: Senior Magistrates".

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is hereby amended by -

(a) the deletion of the expression "or region" in the definition of "abroad";

(b) the substitution for the definition of "Department" of the following definition:

" 'Department' means the Department of Justice and Constitutional Development;";

(c) the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General: Justice and Constitutional Development or a person delegated by him or her;";

- (d) the substitution for the definition of "headquarters" of the following definition:
" 'headquarters' means the city, town or place which has been designated by the Commission or a person designated by the Commission;";
- (e) the substitution for paragraph (b)(i) of the definition of "household" of the following paragraph:
"(b)(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 work 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";
- (f) the deletion of the definition of "Republic"; and
- (g) the substitution for paragraph (i) of the definition of "transfer" of the following paragraph:
"(i) the moving of a magistrate and his or her household from one headquarters to another in the Republic or to or from abroad;".

Repeal of Part III of the Regulations

4. Part III of the Regulations is hereby repealed.

Amendment of regulation 22 of the Regulations

5. Regulation 22 of the Regulations is hereby amended by -

- (a) the substitution for subregulation (1) of the following subregulation:
"(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.";

- (b) the substitution for subregulation (2) of the following subregulation:
"(2) The Director-General shall, upon direction of the Commission, effect the transfer of a magistrate."; and
- (c) the deletion of subregulations (3) and (4).

Amendment of regulations 26, 27, 28 and 29 of the Regulations

6. The Regulations are hereby amended by the substitution for regulations 26, 27, 28 and 29 of the following regulations:

"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 written exposition 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 written exposition, of his or her finding and the reasons therefor; 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 exposition 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 finding 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 written exposition, of its opinion 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."

Amendment of regulation 54 of the Regulations

7. Regulation 54 of the Regulations is hereby amended by the substitution for the regulation of the following regulation:

"Creation of posts

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

General

8. The Regulations are hereby amended by the insertion of the word "or" and the feminine pronoun after the masculine pronoun, wherever it appears in the Regulations.

Repeal of Schedule B to the Regulations

9. Schedule B to the Regulations is hereby repealed.
