

South Africa

Sheriffs Act, 1986

## Regulations relating to Sheriffs, 1990

Government Notice R411 of 1990

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## Regulations relating to Sheriffs, 1990

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**Commenced on 12 March 1990**

*[This is the version of this document as it was from 12 March 1990 to 13 September 1990.]*

The Minister of Justice has, under section 62 of the Sheriffs Act, 1986 ([Act No. 90 of 1986](#)), and after consultation with the Board for Sheriffs, made the regulations contained in the Schedule.

#### 1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates—

“**account**” means any account mentioned in section 22(1) or (2) of the Act;

“**Board**”, for the purposes of regulation 11(2) to (12), includes a person authorised by the Minister under section 52(1) of the Act;

“**gross income**” means all income accrued by a sheriff in terms of Part II of Table C of Annexure 2 by the rules promulgated under section 25 of the Magistrates’ Courts Act, 1944 ([Act No. 32 of 1944](#)), read with section 6(3) of the Rules Board for Courts of Law Act, 1985 ([Act No. 107 of 1985](#)), and in terms of the tariff in rule 68 of the rules promulgated in terms of section 43 of the Supreme Court Act, 1959 ([Act No. 59 of 1959](#)), read with section 6(3) of the Rules Board for Courts of Law Act, 1985 ([Act No. 107 of 1985](#));

“**magistrate**” means the magistrate of the district for which a sheriff for the lower court has been or is to be appointed, or the magistrate for the district in which the area of the sheriff that has been or is to be appointed for the superior court is situated, and includes an additional magistrate for that district, but not a regional magistrate;

“**net income**” means gross income after deduction of the actual expenses incurred by sheriff in respect of advertisements with regard to sales in execution and in respect of postage, telephone calls, control and possession of goods, tending of livestock, removal and storage of goods and the employment of a locksmith to open any door or piece of furniture;

“**sheriff**”, except for the purposes of regulations 2 and 6(1), includes an acting sheriff;

“**the Act**” means the Sheriffs Act, 1986 ([Act No. 90 of 1986](#)).

#### 2. Appointment of sheriffs

- (1) Whenever the office of sheriff becomes vacant, the magistrate concerned shall within seven days from the date on which the vacancy has occurred, inform the Director-General of Justice and the Board in writing of the vacancy and of the closing date for applications to fill the vacancy.
- (2) Within seven days of the occurrence of a vacancy referred to in sub regulation (1) or the receipt of a notice of the description of an area referred to in section 3(2) of the Act, the magistrate shall affix notices to the notice boards at his office, periodical courts and branch courts in his district stating—
  - (a) the area for which the vacancy exists or the area referred to in section 3 (2) of the Act;
  - (b) the requirements applicable to applications for appointment of sheriff; and

- (c) the closing date for such applications.
- (3) The closing date for applications for appointment as sheriff shall not be less than 30 days from the date on which the magistrate affixed the notices referred to in sub regulation (2) to the notice boards.
- (4) Any person intending to apply for appointment as sheriff shall complete a form as set out in Form 1 of the Annexure to these regulations in duplicate and lodge the forms with the magistrate concerned.
- (5) Each form lodged in terms of subregulation (4) shall be accompanied by—
  - (a) a curriculum vitae of the applicant;
  - (b) a statement of the assets and liabilities of the applicant on a form as set out in Form 2 of the Annexure to these regulations; and
  - (c) a report on a form as set out in Form 3 of the Annexure to these regulations by the applicant's most recent employer, or, if the applicant is unable to obtain such a report, certified copies of two recent testimonials, together with an explanation by the applicant as to why he is unable to obtain such a report.
- (6) Within seven days after the closing date for the applications in question the magistrate shall—
  - (a) forward those applications, together with a report compiled by him in respect of each application, to the Director-General of Justice; and
  - (b) forward copies of those applications to the Board.
- (7) The Board shall within 30 days after receipt of the applications referred to in sub regulation (6)(b) submit the names of the applicants to whom the Board would be prepared to grant fidelity fund certificates, in order of preference to the Minister.
- (8) After receipt of the documents referred to in sub regulation (7), the Minister shall appoint a sheriff for the area concerned.

### 3. Fidelity fund certificates

- (1) The form on which a sheriff may apply to the Board for a fidelity fund certificate shall be as set out in Form 4 of the Annexure to these regulations.
- (2) An application for a fidelity fund certificate shall be accompanied by a contribution of R50,00: Provided that a further contribution of R100,00 shall accompany the application with regard to each deputy sheriff that is or was in the applicant's employ during the calendar year that precedes the date of application.
- (3) The form on which the Board shall issue a fidelity fund certificate to a sheriff shall be as set out in Form 5 of the Annexure to these regulations.
- (4) A sheriff shall display his fidelity fund certificate in a conspicuous position in his office.
- (5) The Board may, at the written request of a sheriff and against payment of an amount of R25,00, issue a copy of the fidelity fund certificate in question to the sheriff.
- (6) A document which purports to be a fidelity fund certificate issued in terms of the Act, or a copy of such a certificate certified as a true copy by a person who purports to be a person in the service of the Board, shall on its production be *prima facie* proof of the particulars contained therein.

### 4. Contribution by acting sheriff

An acting sheriff shall pay a contribution of R50,00 for the purpose of section 30(b)(ii) of the Act.

## 5. Claims against Fund

- (1) The form on which a claim against the Fund may be lodged shall be as set out in Form 6 of the Annexure to these regulations.
- (2) Such form shall be available from the Board on request.

## 6. Levies payable to Board

- (1) For the purposes of section 19 (1) of the Act every sheriff shall annually on or before 31 August pay to the Board a levy of 0,40 per cent of his net income of the preceding financial year, ending on the last day of February.
- (2) For the purposes of section 19(1) of the Act every acting sheriff shall pay to the Board a levy of 0,40 per cent of his net income of the preceding month, before or on the 15 day of each month.
- (3) The levy referred to in sub regulations (1) and (2), shall be accompanied by a statement in which the sheriff or acting sheriff sets out the following details.
  - (a) The gross income received by his office during the period mentioned in subregulation (1) or (2), as the case may be;
  - (b) his net income;
  - (c) the amounts, which must be specified, deducted from his gross income to calculate his net income;
  - (d) the amount of the levy payable to the Board.

## 7. Registers, accounts and other documents of sheriffs

Every sheriff shall keep or cause to be kept a register of all process received for service or execution by his office, in which shall be entered the following particulars:

- (a) The date on which a process is received;
- (b) the case number in question;
- (c) the nature of the process;
- (d) the parties involved;
- (e) the fees or expenses charged in respect of the service or execution of the process;
- (f) the fees or expenses paid in respect of such service or execution; and
- (g) any amount outstanding in respect of such service or execution.

## 8. Payment of interest to Fund

- (1) Interest on moneys in an account shall be paid annually to the Fund within a period of 90 days after the last day of February by the sheriff concerned: Provided that if such an account is wound up in terms of section 25 of the Act, the interest shall be paid forth--with to the Fund.
- (2) Such payment of interest shall be accompanied by a certificate in which an auditor shall specify the amount of interest which has accrued to the account of the sheriff during the year ending on the last day of February.
- (3) The payment of interest need not be accompanied by such a certificate if the Board receives the report referred to in section 23(2) of the Act within the period referred to in subregulation (1) and the amount of interest is specified therein.

## 9. Audit report

The form on which an auditor shall furnish the Board with a report in terms of section 23(2) of the Act, shall be as set out in Form 7 of the Annexure to these regulations.

## 10. Vacating of office

- (1) When a sheriff dies or for any other reason vacates his office, all process and other documents which were in his possession, including such records as may be necessary to pay claims against his account, shall be taken into possession by the magistrate concerned and delivered to the sheriffs successor, who shall be responsible for the payment of those claims from the moneys in that account: Provided that such delivery shall not take place unless the successor in question furnishes proof that—
  - (a) a fidelity fund certificate has been issued to him; or
  - (b) he has paid the contribution referred to in section 30(b)(ii) of the Act.
- (2) As soon as a sheriff has received the process and other documents, including accounting records, from a magistrate and he has as far as possible paid all claims against the trust account, he shall close the trust account of his antecessor.
- (3) Any amount to the credit of the account at the closing of a trust account shall be paid by the successor to the persons entitled thereto.
- (4) A magistrate or an inspector appointed under section 56 of the Act, or the Board may in writing direct a banking institution or building society to furnish him or it within the period specified in the direction with such information as he or it may require in connection with an account of a sheriff and as may be available to the banking institution or building society.
- (5) Every record or other document acquired by or in the possession of a sheriff by virtue of his office shall be retained by the sheriff for a period of at least three years after the date to which it relates.

## 11. Improper conduct

- (1) Any complaint, accusation or allegation against a sheriff shall be in the form of a written affidavit, stating the date and time of the incident, the name of the sheriff and the names of any eyewitnesses to the incident, and shall together with any corroborative documents be lodged with the Board as soon as may be practicable after the incident.
- (2) A charge of improper conduct shall be served personally on a sheriff by any other sheriff or person designated by the Board.
- (3) Such other sheriff or person shall within seven days after receipt of the charge report in writing to the Board regarding the service.
- (4) If the accused sheriff avoids personal service of the charge, the Board may forward the charge by registered post to the last known address of the accused sheriffs office.
- (5) The provisions of subregulations (2), (3) and (4) shall *mutatis mutandis* apply in respect of the notice in writing to be given to the sheriff charged in terms of section 46 of the Act.
- (6) A summons referred to in section 48(2) of the Act shall be in the form as set out in Form 8 of the Annexure to these regulations.
- (7) The original summons and one copy thereof shall be forwarded by the Board to a sheriff or other person designated by the Board for that purpose, for service on the person who is summoned.
- (8) The copy of the summons shall be served by the sheriff or such other person personally on the person concerned or by handing it at that person's residence or place of business, or at his place

of employment, to any other person who apparently is not less than 16 years of age and who apparently resides or is employed there.

- (9) If a person on whom a summons is to be served, keeps his residence or place of business closed and so prevents the service of the summons on him or makes it impossible, the summons shall be served by affixing a copy of the summons to the outer or principal door of such residence or place of business.
- (10) The sheriff or other person serving a summons shall, if the person on whom it is being served so demands, exhibit to him the original summons.
- (11) The sheriff or other person serving a summons shall make a return of service by entering on the original summons or on a document attached thereto, the mode of service.
- (12) The return of service shall immediately be forwarded to the Board.

## 12. Appeals

- (1) A sheriff (hereinafter referred to as "the appellant") who appeals to the Board under section 18(4) of the Act shall within 30 days after the date on which the disciplinary committee concerned has made a finding or imposed a penalty, lodge a notice of appeal in writing with the Board in which he shall set out, with the appropriate particulars, the grounds of the appeal and state whether the appeal is against the finding or the penalty, or both.
- (2) As soon as may be practicable after the Board has received a notice of appeal, the Board shall notify the Minister of the appeal and of the grounds on which the appeal is based.
- (3) Within 30 days after receipt of the notice of appeal by the Board, the Board shall make a certified copy of the record of the proceedings of the disciplinary committee available to every member of the Board and to the appellant.
- (4) At the consideration by the Board of such an appeal a certified copy of the record of the proceedings of the disciplinary committee shall be *prima facie* proof of the contents thereof.
- (5) The chairman of the Board or a person appointed by him shall determine the time, place and date on which the appeal shall be heard and shall notify the members of the Board, the appellant and his representative, if any, and the Minister by registered post thereof: Provided that the appeal shall be heard by the Board within 60 days after the copies of the record referred to in sub regulation (3) were made available.
- (6) The Board shall keep a record of the proceedings.
- (7) The Board may allow further evidence to be led by the prosecutor or the appellant.
- (8) If the appellant is present or represented, he or his representative shall be given the opportunity to argue the grounds of appeal, whereafter his case shall be closed.
- (9) The prosecutor, authorised by the Board, shall thereafter be given an opportunity to argue the grounds of appeal, whereafter his case shall be closed.
- (10) After the cases of both parties have been finally closed, the prosecutor shall address the Board with regard to the evidence, if any, and the legal position.
- (11) The appellant or his representative shall thereafter likewise address the Board.
- (12) The Board may in its discretion allow the prosecutor to reply to questions of law raised by the appellant or his representative in his address.

## 13. Witnesses at appeals

- (1) After a witness has testified at the consideration of an appeal the opposing party shall be entitled to cross-examine the witness, and thereafter the Board may put any question to the witness.

- (2) After a witness has been cross-examined, the party who led the evidence shall be entitled to re-examine the witness, but he shall limit his re-examination to matters on which the witness had been cross-examined or on which the Board has put questions to the witness.
- (3) All oral evidence shall be under oath or affirmation.
- (4) The provisions of regulation 11(3), (4) and (6), and of section 48 and paragraphs (e), (f) and (g) of section 60(1) of the Act shall apply *mutatis mutandis* to a witness at an appeal.

#### 14. Consideration of appeals

- (1) After the termination of the hearing of an appeal the Board shall consider the appeal *in camera*.
- (2) After consideration of the appeal the Board shall make known the finding of the Board.
- (3) After the announcement of the finding of the Board the Board shall, where a penalty is still to be imposed, give the prosecutor an opportunity to lead evidence and to make representations in connection with the imposition of a penalty.
- (4) The Board shall thereafter give the appellant, if present, an opportunity to lead evidence and to address the Board in mitigation of the penalty which is to be imposed.
- (5) Thereafter the Board shall *in camera* consider the penalty which is to be imposed.
- (6) After consideration of the penalty the Board shall make known the finding of the Board.
- (7) As soon as possible after the consideration of an appeal by the Board, the Board shall notify the Minister and the appellant, if he was not present, of the outcome of the appeal.
- (8) If a finding of a disciplinary committee or a penalty against which an appeal was lodged, is confirmed, the appellant concerned shall pay the essential costs incurred by the Board in connection with the consideration of the appeal, and such costs shall include the following:
  - (a) The costs of recording, transcribing and preparing copies of any record;
  - (b) the costs of procuring the attendance of witnesses and their witness fees; and
  - (c) the costs incurred by the Board in respect of an auditor or auditors or other person appointed to conduct an examination and report on the appellant's process of court and other documents, including accountancy notes relating to the appellant's practice.

#### 15. Investment of moneys in Fund

- (1) The Board shall, having regard to the audited annual financial statements referred to in section 28(1)(b) of the Act, decide what moneys in the Fund are not immediately required for the purposes of the Fund.
- (2) Any money referred to in subregulation (1) shall, in terms of section 27 (2) of the Act, be invested by the Board in any one or more of the following forms of security:
  - (a) On deposit with a banking institution, building society or registered mutual life assurance company: Provided that not more than 25 per cent of the moneys referred to in subregulation (1) may be invested in such life assurance company;
  - (b) in bills, bonds, certificates, debentures or stock issued or guaranteed by the Government of the Republic;
  - (c) in stock of any local authority in the Republic which is authorised by law to levy rates on immovable property;
  - (d) in debentures or stock of the Reserve Bank, the Rand Water Board or any other body constituted or established by or under any law and financed wholly or partly from public funds;



- (e) in debentures, debenture stocks or other securities of Eskom;
- (f) in loans against security of a first mortgage bond on urban immovable property; and
- (g) in urban immovable property: Provided that not more than 10 per cent of the Fund's assets, calculated on the date of investment, may be invested in urban immovable property.

## 16. Offences and penalties

- (1) Any person who—
  - (a) contravenes or fails to comply with a provision of regulation 3(4), 6, 7, 8 (1) or (2) or 10(5);
  - (b) fails to comply with a direction under regulation 10(4); or
  - (c) subject to section 60(1)(d) of the Act furnishes particulars or information or makes a statement in any application, statement, claim or other document in terms of a provision of these regulations, knowing that the particulars or information so supplied or the statement so made is false and misleading,shall be guilty of an offence.
- (2) Any person who is convicted of an offence under these regulations shall be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months.

## 17. Short title

These regulations shall be called the Regulations relating to Sheriffs, 1990.

## Annexure 1

### Forms

*[Editorial note: The forms have not been reproduced.]*