

# **CODE OF CONDUCT FOR SHERIFFS ISSUED IN TERMS OF SECTION 16(K) OF THE SHERIFFS ACT NO. 90 OF 1986 ("THE ACT")**

## **INTRODUCTION**

Sheriffs are an integral part of the justice system generally in South Africa. As the Judicial Officer of the Court, each sheriff is responsible for the effective service or execution of any court processes. This Code of Conduct seeks to regulate the manner in which sheriffs perform these functions to ensure that all sheriffs are aware of their role within the justice system within South Africa, the role of the Board and the Minister of Justice and Constitutional Development.

### **1. DIGNITY & RESPECT**

- 1.1 When performing the function as a sheriff or deputy sheriff, sheriffs acknowledge that they are a part of a constitutional democracy.
- 1.2 Section 10 of the Constitution of South Africa, Act No. 108 of 1996 records specifically that each citizen has inherent dignity and the right to have their dignity respected and protected.
- 1.3 As such all sheriffs are obliged to respect the rights of the citizens of South Africa when performing their functions.
- 1.4 As such by signature hereto each sheriff undertakes to respect the dignity of all those persons whom the sheriff serves.

### **2. COMPLIANCE WITH NATIONAL LEGISLATION**

- 2.1 Sheriffs are regulated by the Sheriffs Act No. 90 of 1986 and the Regulations thereto.

- 2.2 Sheriffs undertake to comply with the precepts of the Act and further to ensure that deputy sheriffs appointed by the sheriffs likewise comply with this Act.
- 2.3 Sheriffs further undertake to comply with all national legislation in the performance of their duties.

### 3. **ASPIRATIONAL GOALS**

- 3.1 The sheriff, having been appointed by the Minister of Justice and Constitutional Development, undertakes to contribute positively towards the efforts of the Minister of Justice to transform the administration of justice in South Africa and to ensure that there are effective services to the communities in which they serve.
- 3.2 The sheriff, although independent, undertakes to appoint employees within the office of each sheriff who are largely representative of the population within South Africa and to ensure that the office of the sheriff becomes largely representative of the population of South Africa.

### 4. **FIT AND PROPER PERSON**

- 4.1 The sheriff acknowledges that he or she is a fit and proper person to be appointed to the office of the sheriff and to hold that office.
- 4.2 The sheriff acknowledges that he or she is responsible for any and all transgressions by any deputy sheriff appointed by him or her together with all office staff employed by him or her.
- 4.3 The sheriff acknowledges that appointment as a sheriff is a fiduciary position which creates fiduciary obligations between the sheriff, the courts, the legal profession and members of the public, all of whom are served by the sheriff.

- 4.4 No sheriff or deputy sheriff may continue to hold office if such a sheriff or deputy sheriff is *inter alia* an un-rehabilitated insolvent, has any unsatisfied civil judgments and whose financial position is such that it will potentially place that sheriff and/or deputy sheriff in a compromising position viz-a-viz his or her creditors. Further no sheriff may appoint a deputy sheriff who is an un-rehabilitated insolvent.
- 4.5 The sheriff undertakes to properly assess any person before the sheriff appoints that person as a deputy sheriff, to ensure that the deputy sheriff is likewise a fit and proper person.
- 4.6 The sheriff undertakes to ensure that his or her financial affairs are conducted in a responsible manner and do not compromise his or her office or that of the South African Board for Sheriffs. Further the sheriff shall continue to remain a fit and proper person to hold that office.
- 4.7 The sheriff acknowledges that the administration of justice generally is brought into disrepute whenever the sheriff has an interest in the suit or is related to a party in the suit.
- 4.8 The sheriff shall at all times avoid to place himself or herself in a position that will lead to a potential conflict of interest arising and in the event that such a potential conflict of interest arises, the sheriff shall report this to the South African Board for Sheriffs for guidance on how best to avoid the conflict of interest arising.

## 5. **ROLE OF THE SOUTH AFRICAN BOARD FOR SHERIFFS**

- 5.1 The sheriff acknowledges that the South African Board for Sheriffs, established in terms of section 7 of the Sheriffs Act No. 90 of 1986, is appointed to maintain the esteem, enhancement of the status of and the improvement of the standard of training and functions performed by sheriffs Further the sheriff acknowledges that the South African Board for Sheriffs is the regulatory authority for all sheriffs in South Africa,

appointed in terms of section 2(1) of the Sheriffs Act No. 90 of 1986 and is subject to that authority and regulation.

- 5.2 The sheriff acknowledges that the South African Board for Sheriffs plays an important role in regulating the affairs of the sheriffs' profession.
- 5.3 The sheriff accepts that the South African Board for Sheriffs regulates the following areas:
  - 5.3.1 oversight of the establishment and management of trust accounts;
  - 5.3.2 receiving and investigation of complaints and report back to relevant third parties;
  - 5.3.3 establishment of whether each sheriff has taken out adequate indemnity insurance;
  - 5.3.4 appointment of service providers who will provide approved training courses and skills enhancement of sheriffs;
  - 5.3.5 ensuring that sheriffs keep proper records of their activities and transactions they undertake;
  - 5.3.6 discipline of sheriffs;
  - 5.3.7 any other functions related to the above;
  - 5.3.8 payment, collection of levies annually before the prescribed date and payment of interest on the trust account to the Fidelity Fund and investment of levies; and

- 5.3.9 recovering of funds misappropriated from the trust accounts of sheriffs.
- 5.4 The sheriff undertakes to co-operate with the Board in the performance of its functions.
- 5.5 The sheriff agrees to pay levies to the Board timeously and in full.
- 5.6 The sheriff and/or deputy sheriff are encouraged to engage with the media through the South African Board for Sheriffs. as it has dedicated resources for this purpose.
- 5.7 As such in respect of any requests for comment by any journalist, each sheriff undertakes to refer such queries to the South African Board for Sheriffs.

## 6. **ADMINISTRATIVE FUNCTION**

A sheriff undertakes to keep proper records and copies of any documents for a minimum period of 5 (five) years to enable the South African Board for Sheriffs to exercise its powers herein, to ensure that the South African Board for Sheriffs is able to comply with its administrative functions.

## 7. **PERFORMANCE**

- 7.1 A sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he or she has been appointed.
- 7.2 A sheriff entrusted with the service or execution of a process shall act without avoidable delay in accordance with the provisions of rule 8(4) of the Magistrate's Court Rules or rule 4(6)(a) of the Supreme Court Rules:

*"provided that any process, requiring urgent attention shall be dealt with*

*forthwith."*

- 7.3 The return made on a process shall be made on A4 size paper in the official language in which the process was sued out and shall contain further the following minimum information:
- 7.3.1 case number;
  - 7.3.2 court and district of issuing;
  - 7.3.3 full names of the parties;
  - 7.3.4 address where service or execution took place;
  - 7.3.5 date and time of service or execution, and/or dates and times of attempted services or executions and reasons for the non-services or non-executions;
  - 7.3.6 manner of service (strictly in accordance with the rules of service and supplying a full description of the facts and circumstances)
  - 7.3.7 specified bill of costs; and
  - 7.3.8 signature of sheriff or deputy.
- 7.4 A sheriff who undertakes other remunerative work or is associated with an organisation or a business undertaking or who has a direct or indirect financial interest in an organisation or a business undertaking shall perform any act of function pertaining thereto, and word any advertisement pertaining thereto in such a way that it cannot be associated with the office of sheriff. Before undertaking any private business, sheriffs must obtain consent from the Minister of Justice and Constitutional Development.
- 7.5 All letters, except standard letters accompanying process, shall be answered in writing with the least possible delay.

- 7.6 Trust money shall be paid out to the person entitled thereto without avoidable delay.
- 7.7 A sheriff shall refrain from performing any act as sheriff in any matter in which he or she has a direct or indirect interest.
- 7.8 A sheriff shall at all times act in an impartial, unbiased and fair manner and with discretion towards all parties and shall ensure, as far as it is possible for him or her to do so, that deputy sheriffs in his employ act in like manner.
- 7.9 A sheriff shall serve members of the public in the official language in which he or she is addressed or otherwise communicated with and shall ensure that the deputy sheriffs including staff in his or her employ serve the public in like manner.
- 7.10 A sheriff shall when he or she vacates his or her office shall ensure that a proper handover of all documents, processes and accounting records to the incoming sheriff. These shall be in both hard copies and electronic versions where possible. Such a handover shall be conducted in the presence of a Court Manager alternatively a designated official by the Department of Justice.

## 8. **CHARGES**

- 8.1 A sheriff shall ensure that his or her charges are in accordance with the applicable tariff.

## 9. **TRUST MONIES**

- 9.1 A sheriff undertakes to promptly pay into trust any monies obtained on behalf of others and to fully account for such funds.

- 9.2 The sheriff is required to deal with any trust monies honestly, in good faith and with the utmost care to ensure that the funds are received by the correct person.
- 9.3 The sheriff is required at all times to ensure compliance with sections 22 and 23 of the Act.

## 10. **GENERAL**

- 10.1 A sheriff may not act in any way that will bring the good name and esteem of the office of the sheriff in particular and the administration of justice in general into disrepute or cause it to appear in a bad light and shall, as far as it is possible for him or her to do so, ensure that deputy sheriffs in his employ do not so act.
- 10.2 A sheriff may not accept from or on behalf of any person any favour or gift (including excessive hospitality or receptions), which may influence him or her in the execution of his or her duties, or which in the opinion of any reasonable person, may so influence him or her and shall ensure, as far as it is possible for him or her to do so, that deputy sheriffs in his or her employ do not so act.
- 10.3 A sheriff may not use for personal gain or for the personal gain of third parties, any confidential information which he or she has obtained by virtue of his or her position and may also not divulge any such confidential information. He or she shall also ensure, as far as it is possible for him or her to do so, that deputy sheriffs in his or her employ do not so act.
- 10.4 The sheriff is required to comply with section 43 of the Act in so far as his or her conduct is concerned and further undertakes to ensure that all those employed by the sheriff likewise complies with his or her obligations in terms of the Act in so far as this is necessary.



