

(28 February 2014 – to date)

SUPERIOR COURTS ACT 10 OF 2013

(Gazette No. 36743, Notice No. 615 dated 12 August 2013. Commencement date: 23 August 2013 [Proc. No. R36, Gazette No. 36774]- with the exception of sections 29, 37 and 45 and Items No. 11 of Schedule 1 and No. 1.1 of Schedule 2)

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NORMS AND STANDARDS FOR THE PERFORMANCE OF JUDICIAL FUNCTIONS

Government Notice 147 in Government Gazette 37390 dated 28 February 2014. Commencement date: 28 February 2014.

By virtue of the powers vested in me in terms of section 165(6) of the Constitution read with section 8 of the Superior Courts Act, 2013 (Act no 10 of 2013) (the Act) I, Mogoeng Mogoeng, the Chief Justice of the Republic of South Africa, hereby issue the following directive:

In terms of section 8(3) the attached norms and standards for the exercise of judicial functions of all courts are attached.

This directive is issued and published in the *Gazette* and enjoys the majority support of the Heads of Superior Courts and Heads of Magistrates' Court.

(Signed)

Mogoeng Mogoeng

Chief Justice of the Republic of South Africa



NORMS AND STANDARDS

ISSUED BY THE CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA IN TERMS OF SECTION 8 OF THE SUPERIOR COURTS ACT 10 OF 2013 READ WITH SECTION 165(6) OF THE CONSTITUTION

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1. PREAMBLE

Whereas section 165(1) of the Constitution provides that the judicial authority of the Republic is vested in the courts;

AND Whereas the Constitution further provides that -

- (i) the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice [section 165(2)];
- (ii) no person or organ of state may interfere with the functioning of the courts [section 165(3)];

- (iii) organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts [section 165(4)];
- (iv) everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court [section 34]; and
- (v) everyone is equal before the law and has the right to equal protection and benefit of the law [section 9(1)];

AND Whereas section 165(6) of the Constitution read with section 8 of the Superior Courts Act, 10 of 2013, provides that the Chief Justice is responsible for the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts, and enjoins the Chief Justice to issue written protocols or directives, to give guidance or advice to Judicial Officers (Judges and Magistrates);

AND Whereas section 12(5) of the Judicial Service Commission Act, 1994 (Act 9 of 1994) provides for the Code of Judicial Conduct to serve as the prevailing standard of judicial conduct which Judges must adhere to;

AND Whereas Regulation 54A of the Regulations for Judicial Officers in Lower Courts, 1994 promulgated under the Magistrates Act, 1993, (Act 90 of 1993) provides for a Code of Conduct for Magistrates.

Now therefore the Chief Justice hereby issues the norms and standards contained herein for the performance of judicial functions. These norms and standards are binding on all Judicial Officers and apply to all Courts in the Republic of South Africa, subject to appropriate modifications or adaptations necessitated by the nature of the Court or special circumstances.

These norms and standards incorporate the practice directives for all Superior Courts, Regional Courts, District Courts and all other courts, which the Chief Justice will issue from time to time. All protocols and directives currently in operation will remain extant. The various practice directives therefore encapsulate and expand the broad outline contained in these norms and standards and similarly seek to attain the objectives outlined above and as set out in section 8(3)(b) of the Superior Courts Act. In the event of a conflict between these norms and standards and any practice directives, the former will prevail. Uniform Practice Directives will as far as practicable be developed for the Superior Courts, Regional Courts, District Courts and all other courts and will be issued by the Chief Justice in consultation with the Heads of Court, the Regional Presidents Forum and the Chief Magistrate's Forum, as the case may be.

2. OBJECTIVES

These norms and standards seek to achieve the enhancement of access to quality justice for all; to affirm the dignity of all users of the court system and to ensure the effective, efficient and expeditious

adjudication and resolution of all disputes through the courts, where applicable. These objectives can only be attained through the commitment and co-operation of all Judicial Officers in keeping with their oath or solemn affirmation to uphold and protect the Constitution and the human rights entrenched in it and to deliver justice to all persons alike without fear, favour or prejudice in accordance with the Constitution and the law.

3. CORE VALUES

The norms and standards set out in this document are underpinned by the following core values:

- (i) The independence of the Judiciary and the concomitant imperatives of integrity and impartiality of all Judicial Officers.
- (ii) Equality and fairness.
- (iii) Accessibility.
- (iv) Transparency.
- (v) Responsiveness.
- (vi) Diligence.

4. MANAGEMENT OF JUDICIAL FUNCTIONS

The overall responsibility of managing judicial functions and for overseeing the implementation of these norms and standards vests in the Chief Justice as Head of the Judiciary in terms of section 165(6) of the Constitution and section 8(2) of the Superior Courts Act.

The co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of the Division of the High Court is the responsibility of the Judge President of that Division. The Heads of the various Courts will manage the judicial functions and ensure that all Judicial Officers perform their judicial functions efficiently. In the case of the Magistrates' Court, the Heads, who are the Regional Court Presidents and the Heads of the Administrative Regions will account for such management to the relevant Judge President. The President of the Supreme Court of Appeal as well as each Judge President will account to the Chief Justice for the management of his or her court and, in the case of Judges President, the management of the Magistrates' Courts falling within his or her jurisdiction.

The Chief Justice may designate any Judge to assist him or her in his or her judicial or leadership functions.

The list of judicial functions envisaged in section 8(6) of the Superior Courts Act (as well as section 165 of the Constitution), which is not exhaustive, is set out below:

- (i) Determination of sittings of the specific courts;
- (ii) Assignment of Judicial Officers to sittings;
- (iii) Assignment of cases and other judicial duties to Judicial Officers;
- (iv) Determination of sitting schedules and places of sittings for Judicial Officers;
- (v) Management of procedures to be adhered to in respect of:
 - (a) Case flow management;
 - (b) The finalisation of any matter before a Judicial Officer (including any outstanding judgment, decision or order);
 - (c) Recesses of Superior Courts.¹

5. NORMS AND STANDARDS

5.1 NORMS

The following norms are hereby established:

- (i) Judicial Officers must at all times act in accordance with the core values stated above.
- (ii) Every Judicial Officer must dispose of his or her cases efficiently, effectively and expeditiously.
- (iii) The Heads of all Courts must take all necessary initiatives to ensure a thriving normative and standardised culture of leadership and must ensure that these core values are adhered to.
- (iv) The Heads of all courts should engender an open and transparent policy of communication both internally and externally. Collegiality amongst Judicial Officers should be fostered and encouraged.
- (v) The Head of each Court should encourage Judicial Officers to ensure that all courts and related services should be open and accessible.

¹ This list of Judicial functions is also contained in section 8(6) of the Superior Courts Act.

- (vi) Judicial Officers should make optimal use of available resources and time and strive to prevent fruitless and wasteful expenditure at all times.
- (vii) Judicial Officers should at all times be courteous and responsive to the public and accord respect to all with whom they come into contact.
- (viii) Judicial Officers should strive for and adhere to a high level of competence and excellence and to this end are encouraged to participate in regular training under the auspices of the South African Judicial Education Institute.

5.2 STANDARDS

The following standards are hereby established:

5.2.1 DETERMINATION OF SITTINGS OF THE SPECIFIC COURTS

- (i) Judicial Officers shall at all times strive to deliver quality justice as expeditiously as possible in all cases
- (ii) It is noted that there is a significant difference in the manner in which courts and the Constitutional Court, the Supreme Court of Appeal and Specialist Courts (the Labour Courts, Labour Appeal Courts, Land Claims Court and the Competition Appeal Court) perform their work, as well as the case loads they carry, the standards set out herein must be applied within that context. The Head of each Court must ensure that Judicial Officers are always available to handle cases.
- (iii) The Head of each Court will be responsible for determining the sittings of each court, subject to the directives and oversight of the Chief Justice.
- (iv) Trial courts should strive to sit for a minimum of 4.5 hours per day and all Judicial Officers should strictly comply with court hours, save where, for good reason, this cannot be done.
- (v) In the event that a Judicial Officer should become unavailable eg. where the roll collapses, the Judicial Officer should make him or herself available to be allocated other work by the Head of the Court or a designated Judicial Officer.

5.2.2 ASSIGNMENT OF JUDICIAL OFFICERS TO SITTINGS

- (i) The Head of each Court must assign Judicial Officers for the hearing of cases. Such allocation must be done in an equitable, fair and balanced manner and must as far as practicable, be effected in a transparent and open manner. Exchange of cases between Judicial Officers is to be done through, or in consultation with, the Head of Court or a Senior Judicial Officer assigned for that purpose.

- (ii) The Head of each Court must ensure that there are Judicial Officers assigned for all sittings so that cases are disposed of efficiently, effectively and expeditiously.
- (iii) Every effort must therefore be made to ensure that an adequate number of Judicial Officers is available in all courts to conduct the courts' business.
- (iv) The Head of each court must ensure that a written record is kept of vacation and other leave, or extraordinary absence afforded to all Judicial Officers.
- (v) Where applicable, during each recess period the Head of court must ensure that an adequate number of Judicial Officers are available in that court to deal with any judicial functions that need to be dealt with.
- (vi) Recommendations for the appointment of acting Judicial Officers to a court must be made in instances where a Judicial Officer is not available to conduct the duties of that court for whatever reason, or as the need may arise, for example to address the backlogs.
- (vii) The Head of a Court may from time to time assign other judicial or related duties to another Judicial Officer.
- (viii) A Judicial Officer shall not absent him or herself without the permission of the Head of the Court or a designated Judicial Officer where applicable.

5.2.3 DETERMINATION OF THE SITTING SCHEDULES AND PLACE OF SITTING FOR JUDICIAL OFFICERS

The Head of a Court shall determine the sitting schedules and places of sitting for Judicial Officers. Without derogating from the abovementioned general standard, presiding Judicial Officers shall retain the discretion to arrange sittings in the cases before them to make efficient use of court time.

5.2.4 JUDICIAL CASE FLOW MANAGEMENT

- (i) Case flow management shall be directed at enhancing service delivery and access to quality justice through the speedy finalisation of all matters.
- (ii) The National Efficiency Enhancement Committee, chaired by the Chief Justice, shall co-ordinate case flow management at national level. Each Province shall have only one Provincial Efficiency Enhancement Committee, led by the Judge President; that reports to the Chief Justice.
- (iii) Every Court must establish a case management forum chaired by the Head of that Court to oversee the implementation of case flow management.

- (iv) Judicial Officers shall take control of the management of cases at the earliest possible opportunity.
- (v) Judicial Officers should take active and primary responsibility for the progress of cases from initiation to conclusion to ensure that cases are concluded without unnecessary delay.
- (vi) The Head of each Court shall ensure that Judicial Officers conduct pre-trial conferences as early and as regularly as may be required to achieve the expeditious finalisation of cases.
- (vii) No matter may be enrolled for hearing unless it is certified trial ready by a Judicial Officer.
- (viii) Judicial Officers must ensure that there is compliance with all applicable time limits.

5.2.5 FINALISATION OF ALL MATTERS BEFORE A JUDICIAL OFFICER

All Judicial Officers must strive to finalise all matters, including outstanding judgments, decisions or orders as expeditiously as possible. It is noted that some cases may, due to the complexity and magnitude thereof, take longer to finalise than the norms set out herein.

- (i) Finalisation of civil cases:
 - a) High Court - within 1 year from the date of issue of summons.
 - b) Magistrates' Courts - within 9 months from the date of issue of summons.
- (ii) Finalisation of criminal cases:
 - (a) In order to give effect to an accused person's right to a speedy trial enshrined in the Constitution, every effort shall be made to bring the accused to trial as soon as possible after the accused's arrest and first appearance in court.
 - (b) The Judicial Officer must ensure that every accused person pleads to the charge within 3 months from the date of first appearance in the Magistrates' court. To this end Judicial Officers shall strive to finalise criminal matters within 6 months after the accused has pleaded to the charge.
 - (c) All Judicial Officers are enjoined to take a pro-active stance to invoke all relevant legislation to avoid lengthy periods of incarceration of accused persons whilst awaiting trial.

5.2.6 DELIVERY OF JUDGMENTS

Judgments, in both civil and criminal matters, should generally not be reserved without a fixed date for handing down. Judicial Officers have a choice to reserve judgments sine die where the circumstances are such that the delivery of a judgment on a fixed date is not possible. Save in exceptional cases where it is not possible to do so, every effort shall be made to hand down judgments no later than 3 months after the last hearing.

5.2.7 RECESSES

Recesses of the Superior Courts shall be regulated as set out in sections 9(2), (3) and (4) of the Superior Courts Act

6. MONITORING AND IMPLEMENTATION

- (i) The Chief Justice as the Head of the Judiciary shall exercise responsibility over the monitoring and evaluation of the performance of each Judicial Officer as well as the monitoring and implementation of norms and standards for the exercise of leadership and judicial functions of all courts.
- (ii) Everything reasonably possible should be done to ensure that Judicial Officers have all the resources and tools of trade availed to them to enable them to perform their judicial functions efficiently and effectively. Reporting is an essential and integral part of ensuring effective monitoring and implementation of the norms and standards. All Judicial Officers shall submit data on their performance and the workflow of cases for collating and analysis following upon which a comprehensive report by the Head of Court will be compiled.
- (iii) The report must be submitted to the Head of a Court who will, in the case of Regional and District Courts, first submit to the Regional Court President and the Head of the Administrative Region, who in turn will submit it to the Judge President concerned for further submission to the Chief Justice to assess the functioning and the efficiency of the courts. Each Head of Court shall monitor and evaluate performance of the Judicial Officers serving in his or her court on a daily basis to ensure optimal utilisation and productivity.

These norms and standards for the exercise of judicial functions of all courts were unanimously adopted at the meetings of the Heads of the Superior Courts² held in Cape Town on 13 February 2014 and Heads of Magistrates' Court³ held in Cape Town on 14 February 2014.

² The Heads of Court present at the meeting were:

Mogoeng CJ, Chief Justice of the Republic of South Africa; Mped P, President of the Supreme Court of Appeal; Mthiyane DP, Deputy President of the Supreme Court of Appeal and Head of the Electoral Court; Kgomo JP, Judge President of the Northern Cape Division of the High Court; Musi JP, Judge President of the Free State Division of the High Court; Mlambo JP, Judge President of the Gauteng Division of the High Court; Leeuw JP, Judge President of the North West Division of the High Court; Waglay JP, Judge President of the Labour Court and Labour Appeal Court; Meer AJP, Acting Judge President of the Land Clams Court; Jappie DJP, Deputy Judge President of the KwaZulu-Natal Division of the High Court; Pakade, ADJP, Acting Deputy Judge President of the Eastern Cape Division of the High Court; Erasmus AJP; Acting Judge President of the Free State Division of the High Court.

Given under my hand in Cape Town on this the 14th day of February 2014.

(Signed)

Mogoeng Mogoeng

Chief Justice of the Republic of South Africa

³ The Heads of Magistrates Court present at the meeting were: Ms JJ Ikaneng, Vice Chairperson of the Magistrates Commission; Mr KM Nqadala, Regional Court President, Northern Cape; Ms JH Wessels, Regional Court President, Limpopo; Ms NA Engelbrecht, Regional Court President, Mpumalanga; Ms SR Monaledi, Regional Court President, North West; Mr BMG Langa, Regional Court President Western Cape; Mr M Maharaj, Acting Regional Court President, KwaZulu-Natal; Mr Maqubela, Acting Regional Court President Eastern Cape; Mr M Djaje, Regional Court President, Gauteng; Ms JJ Ikaneng, Head of Administrative Region, North West; Ms Z Mbalo, Head of Administrative Region, Free State; Ms S Raphahlelo, Head of Administrative Region Eastern Cape cluster A; Mr V Mphokane, Head of Administrative Region, Eastern Cape Cluster B; Mr D Hinxha, Head of Administrative Region, Free State Cluster A; Ms A Motlekar, Head of Administrative Region, Free State Cluster B; Mr ET Mashile, Head of Administrative Region, Gauteng; Ms C Ringane, Head of Administrative Region, Polokwane; Mr EB Ngubane, Acting Head of Administrative Region, KwaZulu-Natal Cluster A; Ms M Monyemore, Head of Administrative Region, KwaZulu-Natal Cluster B; Mr D Ngobeni, Head of Administrative Region, Mpumalanga; Mr O Krieling, Head of Administrative Region, Northern Cape; Mr Dimbaza, Head of Administrative Region, Western Cape Cluster A; Ms H Alman, Head of Administrative Region, Western Cape Cluster B.

Prepared by: