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Government Notice

MINISTRY OF JUSTICE

No. 200

2015

AMENDMENT OF REGULATIONS REGARDING MAGISTRATES: MAGISTRATES ACT, 2003

Under section 27 of the Magistrates Act, 2003 (Act No. 3 of 2003), after the recommendation of the Magistrates Commission, I have amended the Regulations Regarding Magistrates published under Government Notice No. 130 of 27 June 2003 as set out in the Schedule.

A. KAWANA
MINISTER OF JUSTICE

Windhoek, 1 September 2015

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Regulations Regarding Magistrates published under Government Notice No. 130 of 27 June 2003.

Amendment of regulation 1 of Regulations

2. Regulation 1 of the Regulations is amended by the addition after the definition of “candidate” of the following definition:

“Code” means the Code of Conduct for Magistrates published under Government Notice No. 190 of 25 August 2010.

Insertion of Part VA of Regulations

3. The Regulations are amended by the insertion after Part V of the Regulations of the following Part:

“PART VA

CATEGORIES AND PENALTIES OF ACTS OF MISCONDUCT

Acts of misconduct and penalties

18A. (1) Categories of minor and serious acts of misconduct and their appropriate penalties are set out in Schedule 3.

(2) If a magistrate is found guilty of an act of misconduct referred to in section 24 of the Act or in the Code, the Commission after having complied with section 26 of the Act may -

- (a) caution or reprimand the magistrate;
- (b) caution and impose a fine not exceeding N\$1 000;
- (c) caution and transfer the magistrate;
- (d) call upon the magistrate to resign as magistrate; or
- (e) dismiss the magistrate.

(3) If a magistrate, after having been heard or given his or her representation, without a formal misconduct hearing in terms of section 26 of the Act being held, is found guilty of a minor act of misconduct that warrants a warning as classified in Schedule 3 -

- (a) a divisional magistrate may, in the case of a magistrate -
 - (i) give verbal warning;
 - (ii) give written warning; or
 - (iii) give a final written warning;
- (b) the Chief Magistrate may, in the case of a divisional magistrate, regional court magistrate or deputy chief magistrate -
 - (i) give verbal warning;
 - (ii) give written warning; or
 - (iii) final written warning;
- (c) the Commission may, in the case of the Chief Magistrate -
 - (i) give verbal warning;
 - (ii) give written warning; or

(iii) final written warning.

(4) If a magistrate is not satisfied with the ruling and final written warning given to him or her under subregulation (3) -

- (a) by a divisional magistrate the magistrate may appeal to the Chief Magistrate;
- (b) by the Chief Magistrate the magistrate may appeal to the Commission,

within 14 days of receipt of the final written warning, to have the final written warning cancelled upon such grounds as the magistrate may provide.

(5) The Chief Magistrate or Commission, within 30 days of receipt of an appeal submitted under subregulation (4), after consideration of all the representations and arguments provided in favour and against the appeal may -

- (a) allow the appeal in whole or in part and vary or set aside the finding;
- (b) dismiss the appeal and confirm the finding; or
- (c) send the matter back to the divisional magistrate or Chief Magistrate to reconsider the matter and to make a finding in terms of subregulation (3).

Conduct sheet

18B. (1) A divisional magistrate must -

- (a) keep a conduct sheet in the form of Form 5 in respect of a magistrate found guilty in terms of regulation 18A;
- (b) record every transgression on the conduct sheet of the magistrate;
- (c) file a conduct sheet in the personal file of the magistrate; and
- (d) forward a copy of the conduct sheet filed under paragraph (c) to the office of the Chief Magistrate for filing in the personal file of the magistrate.

(2) A divisional magistrate must keep the record of the conduct sheet referred to in subregulation (1) for a period of five years and where there is no further transgression within that period all entries are deleted.

Corrective counseling

18C. (1) If under regulation 18A a magistrate is given a penalty for any act of misconduct, except where a magistrate is dismissed or called upon to resign, and the Commission upon reasonable grounds submitted by the divisional magistrate or Chief Magistrate is satisfied that the misconduct warrants corrective counseling, the Commission may -

- (a) direct the magistrate to go for corrective counseling for a period determined by the Commission after a recommendation of a divisional magistrate or Chief Magistrate made after consultation with the magistrate concerned; and
- (b) direct the divisional magistrate or Chief Magistrate to implement the agreed course of action.

(2) Corrective counseling may be conducted by way of mentoring, further training interventions, referral for medical treatment, professional counseling and rehabilitation.

(3) This regulation applies with the necessary changes to the Chief Magistrate if it is found to be necessary and appropriate for the Chief Magistrate to undergo corrective counseling.

Verbal warning

18D. (1) Where a minor act of misconduct warrants a verbal warning, the divisional magistrate must -

- (a) verbally bring the misconduct to the attention of the magistrate;
 - (b) determine reasons for the misconduct verbally;
 - (c) give the magistrate an opportunity to respond verbally;
 - (d) give a verbal warning and inform the magistrate that further misconduct may result in more stringent disciplinary action;
 - (e) note the verbal warning on the conduct sheet of the magistrate in the presence of such magistrate; and
 - (f) report the verbal warning to the Chief Magistrate.
- (2) A verbal warning is valid for a period of six months.

Written warning

18E. (1) Where a minor act of misconduct warrants a written warning, a divisional magistrate after having complied with subregulation (2), may give a magistrate a written warning in the form of Form 6 as set out in Schedule 2.

(2) If the facts come to the attention of a divisional magistrate that a magistrate has committed a minor act of misconduct, the divisional magistrate must in writing -

- (a) bring the act of misconduct to the attention of the magistrate;
- (b) stating the facts upon which the act of misconduct is based; and
- (c) give the magistrate an opportunity to respond in writing.

(3) If upon consideration of the response of the magistrate made in terms of subregulation (2)(c) the divisional magistrate is satisfied that the magistrate is guilty of minor act of misconduct, the divisional magistrate must -

- (a) give a written warning to the magistrate who must sign for the receipt;
- (b) record the misconduct in the conduct sheet of the magistrate;
- (c) file a copy of the written warning in the personal file of the magistrate; and
- (d) forward a copy of such written warning to the Chief Magistrate office for filing in the personal file of the magistrate.

- (4) If a magistrate refuses to sign acknowledgement of receipt of a written warning, the divisional magistrate must -
- (a) hand the written warning to him or her in the presence of another magistrate;
 - (b) make such other magistrate to sign as witness in confirming that the written warning was handed to the magistrate found guilty of misconduct under subregulation (3) in his or her presence; and
 - (c) record the refusal by the magistrate to sign the receipt of the written warning in the personal file of the magistrate.
- (5) A written warning is valid for a period of 12 months.

Final written warning

18F. (1) Where a minor act of misconduct warrants a final written warning, a divisional magistrate after having complied with subregulation (2) may give a final written warning to a magistrate in the form of Form 7 as set out in Schedule 2.

(2) If sufficient facts come to the attention of a divisional magistrate that a magistrate has committed a similar minor act of misconduct for which the magistrate has been given a written warning that is still running, the divisional magistrate must, in writing -

- (a) bring the act of misconduct to the attention of the magistrate;
- (b) state the facts upon which the act of misconduct is based and that a written warning on the similar act of misconduct is still running; and
- (c) give the magistrate an opportunity to respond in writing.

(3) If upon consideration of the response of the magistrate made in terms of subregulation (2)(c) the divisional magistrate is satisfied that the magistrate is guilty of the similar minor act of misconduct for which a written warning has been given to him or her and is still running, the divisional magistrate must -

- (a) give a final written warning to the magistrate who must sign for the receipt;
- (b) record the misconduct in the conduct sheet of the magistrate;
- (c) file a copy of the final written warning in the personal file of the magistrate;
- (d) advise the magistrate of his or her right to appeal to the Chief Magistrate for the cancellation of the final written warning, if he or she is not satisfied with the ruling of the divisional magistrate; and
- (e) forward a copy of such final written warning to the Chief Magistrate office for filing in the personal file of the magistrate.

(4) If a magistrate refuses to sign acknowledgement of receipt of a final written warning, the divisional magistrate must -

- (a) hand the final written warning to him or her in the presence of another magistrate;
- (b) make such other magistrate to sign as witness in confirming that the final written

warning was handed to the magistrate found guilty of similar misconduct under subregulation (3) in his or her presence; and

(c) record the refusal by the magistrate to sign the receipt of the final written warning in the personal file of the magistrate.

(5) A final written warning is valid for a period of two years.

(6) A magistrate may appeal to the Chief Magistrate within 14 days of receipt of the final written warning to have his or her final written warning cancelled upon grounds as the magistrate may provide, and the Chief Magistrate must act in accordance with regulation 18A(5).

(7) Regulations 18B, 18D, 18E and this regulation apply with the necessary changes to the Chief Magistrate and Commission regarding the misconduct and discipline of a divisional magistrate, regional magistrate and deputy chief magistrate and the Chief Magistrate, respectively.

No formal hearing of minor acts of misconduct

18G. (1) For a minor act of misconduct classified under Schedule 3 that warrants a warning as penalty no formal hearing as contemplated in section 26 of the Act is held for the purpose of making a determination and imposing appropriate penalty for the misconduct.

(2) A hearing or representation for a minor act of misconduct is considered and determined by -

(a) the divisional magistrate for all magistrates falling under his or her division;

(b) the Chief Magistrate for all divisional magistrates, regional magistrates and deputy chief magistrates; or

(c) the Commission for the Chief Magistrate.

(3) A divisional magistrate, regional magistrate or deputy chief magistrate who is not satisfied with the decision made or penalty given by the Chief Magistrate may appeal to the Commission to have his or her final written warning cancelled upon grounds as he or she provides.

Serious acts of misconduct

18H. (1) If after the verbal warning, written warning and final written warning have been given and the same act of misconduct is repeated, such act of misconduct becomes serious and is dealt with in terms of section 26 of the Act.

(2) Despite subregulation (1), a minor act of misconduct may become serious act of misconduct if it is repeated after a verbal warning or written warning if the circumstances are so serious to warrant a serious penalty that is dealt with in terms of section 26 of the Act.

(3) Where an alleged misconduct is classified under Schedule 3 as serious act of misconduct that warrants a serious penalty than in the case of a minor act of misconduct, such alleged misconduct is dealt with in terms of section 26 of the Act.”.

Addition of Forms 5, 6, 7 and 8 to Schedule 2 to Regulations

4. Schedule 2 to the Regulations is amended by the addition after Form 4 of the following forms:

FORM 6

WRITTEN WARNING

(Regulation 18E)

Date: _____

Name and rank of Magistrate: Mr/Ms/Dr _____

1. This is a written warning against you in terms of the Regulations. Should you engage in further transgression of similar nature, it could lead to formal misconduct proceedings being instituted against you in terms of section 26 of the Act.
2. The copy of the written warning is filed in your personal file.
3. If you object to the warning, you may direct your appeal to the Chief Magistrate/ Magistrates Commission, within 14 days of receipt of this written warning.
4. The nature of the misconduct is that _____

SIGNATURE: **DATE**
divisional magistrate/Chief Magistrate/Chairperson: Magistrate Commission

SIGNATURE: **DATE**
Magistrate:

SIGNATURE: **DATE**
Witness

FORM 7

FINAL WRITTEN WARNING
(Regulation 18F)

Date: _____

Name and rank of Magistrate: Mr/Ms/Dr _____

1. This is a final written warning against you in terms of the Regulations. Should you engage in further transgression of similar nature, it could lead to formal misconduct proceedings being instituted against you in terms of section 26 of the Act.
2. The copy of the final written warning is filed in your personal file.
3. If you object to the warning, you may direct your appeal to the Chief Magistrate/ Magistrates Commission, within 14 days of receipt of this final written warning.
4. The nature of the misconduct is that _____

SIGNATURE: **DATE**
divisional magistrate/Chief Magistrate/Chairperson: Magistrates Commission

SIGNATURE: **DATE**
Magistrate:

SIGNATURE: **DATE**
Witness.”.

Addition of Schedule 3 to Regulations

5. The Regulations is amended by the addition after Schedule 2 to the Regulations of the following Schedule:

“SCHEDULE 3

CLASSIFICATION OF ACTS OF MISCONDUCT

(Regulation 18A)

Note: *The classification under this Schedule is not to be construed in any manner as exhaustive or to in any manner limit or prescribe the discretion of a divisional magistrate, the Chief Magistrate or the Commission regarding misconduct and discipline.*

ACTS OF MISCONDUCT		PENALTY		
Description	Type of offence	First misconduct	Second misconduct	Third misconduct
1. Where a magistrate is found guilty of a criminal offence relating to the performance of the duties of his or her office	Serious	Resignation or dismissal		
2. Where a magistrate found guilty of an offence for which he or she is sentenced to any term of imprisonment without the option of a fine	Serious	Dismissal		
3. If found guilty of an offence and is sentenced to term of imprisonment exceeding three months with the option of a fine	Serious	Caution and reprimand, caution and transfer, resignation or dismissal	Dismissal	
4. Contravenes or fails to comply with a provision of the Act, Regulations or Code	Minor/ Serious	Verbal warning, written warning, final written warning or fine and final written warning, caution and transfer, resignation or dismissal	Final written warning, Fine and final written warning, caution and transfer, resignation or dismissal	Caution and transfer, resignation or dismissal
5. Is negligent or indolent in the performance of duties of his or her office	Minor/ Serious	Written warning, final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal
6. Uses intoxicants or stupefying drugs excessively without a prescription of a medical practitioner resulting in his or her incapacity to perform the duties of his or her office efficiently	Serious	Final written warning and corrective counselling, or fine and final written warning and corrective counselling, caution and transfer, resignation or dismissal	Resignation or dismissal	

7. Uses or is under influence of intoxicants or stupefying drugs during official hours of attendance without prescription of medical practitioner	Serious	Final written warning and corrective counselling, or fine and final written warning and corrective counselling, caution and transfer, resignation or dismissal	Resignation or dismissal	
8. Accepts or demands in respect of performance of or failure to perform his or her duties any commission, fee or pecuniary or other award to which he or she is not entitled by virtue of his or her office	Serious	Resignation or dismissal		
9. Operates or undertakes, without the approval of the Commission, any private agency or private work in regard to any matter directly or indirectly related to the performance of the functions of his or her office or any matter directly or indirectly related to the field of operations of a magistrate, or fails to declare that a member of his or her household operates or undertakes any such private agency or private work	Serious	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal	
10. Misappropriates or makes improper use of any property of the State	Minor/ Serious	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Caution and transfer resignation or dismissal	Resignation or dismissal
11. Absents himself or herself from his or her office or duty without leave or valid cause	Minor/ Serious	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Caution and transfer, resignation, or dismissal	Resignation or dismissal
12. Make a false or incorrect statement, knowing it to be false or incorrect, with a view to obtain any privilege or advantage in relation to his or her official position or his or her duties or to the prejudice of the administration of justice	Serious	Resignation or dismissal		
13. Commits any act which brings or is likely to bring the administration of justice or the magistracy into disrepute	Minor/ Serious	Fine and final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal	

14. Refuses to execute a lawful order	Minor/ Serious	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Fine and final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal
15. Fails to maintain high standards of conduct in both professional and personal capacity, in and out of court	Minor/ Serious	Verbal warning, written warning, final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Written warning, final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal
16. Divulges any confidential information which has come to his or her knowledge in his or her official capacity, except in so far as it is necessary in the execution of his or her duties	Serious	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal	
17. Fails to adhere to the official dress code	Minor/ Serious	Written warning, fine and written warning	Final written warning, fine and final written warning, caution and transfer, resignation or dismissal	Resignation or dismissal
18. Fails to meet the performance standard expected of magistrate and fails to improve his or her performance standard after the interventions contemplated in section 24(4)(a)	Minor/ Serious	Written warning, caution and transfer, plus corrective counselling, resignation or dismissal	Final written warning, resignation or dismissal	Resignation or dismissal

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