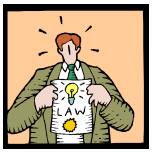
E-MANTSHI

A KZNJETCOM Newsletter

May 2008: Issue 28

Welcome to the twenty eighth issue of our KwaZulu-Natal Magistrates' newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

1. On the 11th of April 2008 the Minister of Justice and Constitutional Development published new regulations prescribing the tariffs of allowances payable to witnesses in criminal and civil proceedings. These regulations were published in Government Gazette No. 30953 of 11 April 2008.

   The tariffs have been increased as follows:

   If private transport is used:

   92c per kilometre in the case of a motorcycle;

   R1.30 per kilometre in the case of a motor vehicle.

   Forfeiture of income: R1 500 per day maximum.

   Daily allowance: R20.

   The tariffs for psychiatrists and clinical psychologists have also been increased. The tariffs for witnesses in civil cases in the Magistrate's Court and High Court have been increased to the same as for witnesses in criminal cases except that the daily tariff is increased to R50.

Recent Court Cases

1. S v. WHITEHEAD AND OTHERS 2008(1) SACR 431 SCA

There is no infallible formula to determine whether there has been a duplication of convictions. The various tests formulated by courts are simply useful practical guidelines.

The appellants were convicted in a regional court of public violence and culpable homicide and, in the case of the seventh appellant, of assault with intent to do grievous bodily harm. They were all sentenced to five years' imprisonment on each of the charges, of which two years were suspended, giving an effective sentence of eight years. The seventh appellant received an additional two years on the assault count. The charges arose from an incident in which a group of men attacked striking municipal workers in a rural town; in the course of the attack one of the workers was assaulted with a blunt instrument and later died of his injuries. All seven appellants appealed against their convictions and sentences for culpable homicide and against their sentences for public violence. The seventh appellant appealed against his sentence for assault with intent to do grievous bodily harm. During the hearing of the appeal the court raised the question of whether or not the guilty verdicts on the counts of public violence and culpable homicide constituted a duplication of convictions.

Held (per Navsa JA and Van Heerden JA; Mlambo JA concurring), that there was no infallible formula to determine whether or not there had been a duplication of convictions. The various tests formulated by the courts were not rules of law, and nor were they exhaustive. They were simply useful practical guidelines and, if they failed to provide a satisfactory answer, the matter was correctly left to the common sense, wisdom, experience and sense of fairness of the court. (Paragraphs [34] and [35] at 443*d-f*.)

Held, further, that in contesting multiple convictions it was often submitted that they were premised on the same set of facts. This was the so-called 'evidence test', which enquired whether the evidence necessary to establish the commission of one offence involved proving the commission of another offence. Regarding the present matter, the State would often be able to prove the crime of public violence without any reference whatsoever to the negligent or other killing of any person. The opposite was also true – the offence of culpable homicide was capable of proof independent of acts of public violence. The evidence of the general disturbance caused by the assailants to the public order would be sufficient to secure a conviction on the public violence charge, and the State was accordingly at liberty to continue to prove the offence of culpable homicide. (Paragraphs [39] – [41] at *444c-445a*.)

Held, further, that the courts also sometimes applied the so-called 'intention test'. In

terms of this test, if a person committed several acts, each of which could be an offence on its own, but which constituted a continuous transaction carried out with a single intent, his or her conduct would constitute only a single offence. However, it could hardly be said that a group of people had a common intention to commit culpable homicide, since the fault element of this offence lay in negligence. *In casu* the group had been intent on committing acts of sufficiently serious dimensions and, thereby, forcibly to disturb the public peace. If in so doing they had committed acts separate from what had been intended – such as the negligent killing of the deceased – it was clearly not only permissible, but also eminently fair and just, that they be held liable on that basis. Anything less would frustrate the public interest and the rule of law. For these reasons the conviction on the charge of culpable homicide did not amount to a duplication of convictions and must therefore be confirmed. (Paragraphs [42] – [47] at 445*b*-446*a*.)

2. S v. HAMMOND 2008(1) SACR 476 SCA

Section 252A Act 51 of 1977 did not create a special defence of entrapment; it was merely an evidentiary rule which gave the court discretion not to admit evidence of conduct that went beyond providing an opportunity to commit an offence.

The appellant was convicted of dealing in 3, 22 kg of Methcathinone in contravention of s 5(b) of the Drugs and Drug Trafficking Act 140 of 1992, and sentenced to 12 years' imprisonment. On appeal the appellant contended, first, that his trial had been unfair, since the State had not led all the evidence available to it; and secondly, that since he had been trapped into committing the offence by the police, the evidence of the trap was inadmissible in terms of s 252A of the Criminal Procedure Act 51 of 1977. The two arresting officers made statements in which they claimed to have received information from an anonymous source that led to the arrest. Subsequently, however, they made supplementary statements in which they admitted that the informer had been one of their police superiors, and in which they mentioned for the first time the presence of one Y, who had been in the appellant's car at the time of the arrest. Furthermore, during the course of the appellant's evidence it transpired that there had indeed been a police trap. On the basis of this evidence and the discrepancies in the statements of the arresting officers, the appellant argued that the State did not have 'clean hands' and that his trial had been unfair.

Held, that s 252A of the Criminal Procedure Act did not create a special defence of entrapment: it created an evidentiary rule, and the court was given a discretion as to whether to admit evidence of conduct that went beyond providing an opportunity to commit an offence. According to the appellant, the trial court had not considered all 13 of the factors listed in s 252A (2), nor determined whether or not these had played any role in the commission of the offence by the appellant. This submission was without merit. The factors were listed simply as those to be considered in determining whether the entrapper had gone further than simply providing an opportunity for the offence. There was no requirement that each be considered. Moreover, the contention that any of these factors had actually played a role was not consonant with the appellant's own evidence: he had willingly attempted to obtain

and sell the drug and, had he been able to, he would have done so before the police informers provided him with information about a source. There was no reason why the appellant's evidence should have been treated as inadmissible by the trial court. The evidence showed that the conduct of the police had not gone beyond providing an opportunity to commit an offence, and it was consequently not necessary to consider whether the trial court had correctly exercised its discretion in admitting the evidence under s 252A (3). (Paragraphs [22]-[27] at 483*c*-485*h*.)

3. S v. DLAMINI AND ANOTHER 2008(1) SACR 501 NPD

Section 197(b) of Act 51 of 1977 did not apply to a witness who was an accomplice of the accused and had already been convicted and sentenced in a separate trial.

The appellants were convicted in the High Court of murder and appealed against the conviction only. It was submitted on their behalf that the trial judge had inhibited defence counsel's cross-examination of an accomplice, S, who had given evidence for the State. This had constituted an irregularity of sufficient magnitude to vitiate the proceedings and, accordingly, the convictions of both appellants should be set aside. It was submitted further, that the trial court had erred in its assessment and evaluation of the evidence of this, and another, witness; in particular, insufficient weight had been given to certain contradictions between their versions.

Held, (the court having noted certain exchanges between defence counsel and the trial judge), that the argument based upon the alleged irregular limitation of cross-examination depended for its validity upon a finding that the provisions of s 197(b) of the Criminal Procedure Act 51 of 1977 applied to a witness such as S. If they did, then it was argued that the line of questioning would have led to the destruction of S's credibility. If, on the other hand, the section did not apply to S, then the trial judge had been correct to resist defence counsel's attempts to question him on his previous convictions and other nefarious activities. Section 197 referred to an accused; a witness such as S was not an accused at the time of giving evidence, since he had already been convicted and sentenced in a separate trial. Such a witness was in an entirely different position to an accused; he was no longer subject to the risk of conviction or to the temptation to shift the blame to others, or open to pressure to preserve himself at the expense of another. Clearly, s 197 (b) found no application in the present circumstances; accordingly, the limitations that had been placed upon counsel's cross-examination of S did not constitute an irregularity. In any event, even if s 197 had been of application, the restrictions placed on the cross-examination of S were not such as could be said to have resulted in a failure of justice or an unfair trial. (Paragraphs [14]-[16] and [20] at 507b-508c and *509c-d*.)

4. S v. GREYLING 2008(1) SACR 537 ECD

An absurd sentence cannot be interfered with on review, if it is neither incompetent nor incapable of implementation.

The accused was convicted on four counts of fraud. In each case the sum involved was approximately R3 600, and on each of the counts the accused was sentenced

to a fine of R2 000, or six months' imprisonment, wholly suspended on condition that he repay the various complainants. The magistrate, having subsequently realised that these sentences gave rise to the absurdity that it would be more advantageous to the accused to pay the fine than to repay the complainants, sent the matter to the High Court on special review.

Held, that while the sentence might be absurd, in the sense of being illogical, it was neither incompetent nor incapable of being understood or implemented. Accordingly, the court was unable to interfere with the sentence on review, especially since it appeared that the magistrate wanted the sentence to be increased, and it was trite that the court should not increase sentences on review. (At 537i-538a.)
Application for special review dismissed.

From The Legal Journals

UYS, F.

"Harm by animals"

De Rebus May 2008

VAN LOGGERENBERG, D; DICKER, L; and MALAN, J.

"Attachment and arrest to found or confirm Jurisdiction"

De Rebus May 2008

PILLAY, D.

"Writing a document"

De Rebus May 2008

(These articles can be accessed on the De Rebus website at www.derebus.org.za .)

Contributions from Peers

"RECOGNIZANCES" SECTION 384 OF ACT 56 OF 1955: JUST ANOTHER ENGLISH LEGACY OR A SOUTH AFRICAN THORN IN THE FLESH?

To many a magistrate the application of section 384 of Act 56 of 1955 is something best avoided. The reason for this might be found in a lack of knowledge of the background and application of Section 384.

"Recognisance is an English invention which, throughout the last few centuries, has played an important role in criminal procedure. Witnesses are bound over, so are prosecutors and accused to ensure performance of a variety of duties. The person who enters into a recognisance acknowledges that he owes a specific sum to the Queen, to be enforced against him by due process of law, if he fails in the condition specified."
Coetzee J in ***Williamson v Helleux and another NO 1978 (2) SA 348 TPD*** at 352 B-C.

Requirements for an application for an order in terms of Section 384

1. **The complaint must be made on oath (or affirmation) to a magistrate**. Although it is possible for a complainant to appear before a magistrate and to give *viva voce* evidence with regard to the complaint, it is suggested that evidence on affidavit is the more practical route to follow. There is no prescribed form for the application but it is suggested that the application form used for applications for protection orders under the Domestic Violence Act, No 116 of 1998 can be adjusted for this purpose. (See **Annexure A**)

2. The affidavit must contain evidence of one or more of the following forms of conduct, irrespective of whether it occurred in private or in public:
    a. Violent conduct towards another;
    b. Threatening injury to the person or property of another;
    c. The use of language or behaving in a manner towards another which is likely to provoke a breach of the peace or assault. Coetzee J in the ***Williamson*** case (supra) at (354G) stated that the phrase 'behaved in a manner towards another' should be restrictively interpreted, *ejusdem generis,* to limit it to direct physical behaviour towards the complainant, which is moreover not lawful, such as for instance rude and insulting gestures directed at him in particular.

Procedure

The affidavit containing the complaint must be placed before a magistrate who will have to consider the contents of the affidavit to determine whether it contains *prima facie* evidence of conduct referred to in paragraph 2 above.

A practice which is followed by some magistrates is to initially direct a letter to the respondent with a copy of the complainant's affidavit attached to it, notifying the respondent that a complaint had been received. This might be useful especially where the complaint is not of a serious nature. If the respondent continues with the conduct complained of, or where he or she disputes the allegations, the magistrate may then decide to issue the order referred to hereunder. (Coetzee J in the ***Williamson*** case (supra) at (353 C)).

The magistrate **may** issue an order to the respondent to appear before him or her for an enquiry into the complaint. (See **Annexure B** for an example of the notice to show cause). Coetzee J in the ***Williamson*** case (supra) at (352H) stated that the

complainant does not have the right to insist that the magistrate should order the person against whom the complaint is made to appear before him or her.

Where necessary, the magistrate may also issue a warrant for the arrest of the respondent. It is suggested that arrest as a method of bringing the respondent before court should only be reserved for instances where the respondent has failed to appear after having been ordered to do so or in instances where the threat of physical harm to the complainant is so serious that it warrants immediate intervention.

When the respondent does appear the magistrate is obliged to conduct an enquiry to determine upon the complaint. The magistrate will have to explain to the parties the purpose and nature of the enquiry as well as the possible consequences for the respondent.

Although Coetzee J in the ***Williamson*** case (supra) at (352G and 353A) was of the opinion that the magistrate does not function as a court of law and that no right to legal representation can therefore be claimed, I submit that in the light of our constitutional dispensation and in particular section 34 of the Constitution, it would be wise to treat the enquiry as a judicial tribunal and afford the parties the right to legal representation. Therefore the parties will also have to be advised of their right to legal representation and legal aid (See **Annexure C**). This view may spark some debate as the right to legal representation will also impact on the possible cost order that the magistrate may make.

Coetzee J in the ***Williamson*** case (supra) at (352H), (353 C – D) and (354 A) makes the observation that there is no indication how the enquiry must be conducted or how the presence of witnesses may be secured apart from the fact that the magistrate may "place the parties or any witness thereat on oath." According to him the enquiry may be held quite informally, even without deposition, as long as the dictates of natural justice are adhered to. In determining upon the complaint the magistrate has a discretion to order or not to order the respondent to give recognizances, because he is dealing not so much with what has happened as with what he or she thinks might happen in the future (a form of preventive justice).

Finding

The **finding** the magistrate may make is whether or not the respondent had –

a. conducted himself or herself violently towards the complainant; **and/or**
b. threatened injury to the person or property of the complainant; **and/or**
c. used language or behaved in a manner which is likely to provoke a breach of the peace or assault.

Order

The magistrate may at his or her discretion order a respondent to give recognizances with or without sureties in an amount not exceeding R2000.00 for a period not exceeding six months to keep the peace towards the complainant and to

refrain from doing or threatening injury to the complainant's person or property.

What does this mean in practical terms? The magistrate may order the respondent to give an undertaking that he or she would pay the sum of money specified by the magistrate as surety that he will keep the peace towards the complainant and refrain from doing or threatening injury to the complainant's person or property during the period specified by the magistrate.

A practical step the magistrate can take is to order the respondent to pay the specified sum of money into the trust account at the magistrate's office. If the respondent complies with the conditions of the recognisance within the specified period, the money must be refunded to him or her upon the expiration of the said period.

Costs

The magistrate may also order the respondent or the complainant to pay the costs of and incidental to such enquiry. Coetzee J in the ***Williamson*** case (supra) at (355 B – 356 E) was of the view that the cost of legal representation could only be brought within the magistrate's powers if it can be said to be costs incidental to the enquiry. The award of costs remains within the discretion of the magistrate.

Non-compliance

Where a magistrate has ordered a respondent to give recognizances and such respondent refuses or fails to do so, the magistrate may order the respondent to be committed to prison for a period not exceeding six months unless such security is sooner found.

If the conditions upon which the recognizances were given by the respondent are not observed, the magistrate may declare the recognizances to be forfeited. Such a declaration of forfeiture has the effect of a civil judgment in a civil action in the magistrate's court of the district. It is submitted that the only logical consequence of the said forfeiture is that the judgment is in favour of the State.

Although Section 384 is silent on this aspect, it is submitted that before a magistrate can declare the recognisance given forfeited to the State, he or she will have to inquire into the alleged non-compliance with the conditions imposed. In the normal course of events it will be the complainant who will allege that the respondent had failed to comply with the conditions upon which the recognizances were given. It is suggested that, preferably, it be made on affidavit.

The clerk of the court will place such affidavit containing evidence of non-compliance before the magistrate and the magistrate may then again issue a notice to the respondent calling on him or her to appear before the magistrate on a date determined by the magistrate to show cause why the recognizances given should not be forfeited to the State.

On the return date the magistrate may once again conduct an enquiry, giving both parties the opportunity to lead evidence and if necessary, to call witnesses concerning the alleged non-compliance.

Alphons van der Merwe, Additional Magistrate, Ladysmith (KZN)

If you have a contribution which may be of interest to other Magistrates could you forward it via email to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or by fax to 031 3681366 for inclusion in future newsletters?

Matters of Interest to Magistrates

THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002
(The Bangalore Draft Code of Judicial Conduct 2001adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

Preamble
WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.
WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.
WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.
WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.
WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.
WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.
WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.
WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:

IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the

impartiality of the judge and of the judiciary.
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2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:
INTEGRITY
Principle:
Integrity is essential to the proper discharge of the judicial office.
Application:
3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:
PROPRIETY
Principle:
Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:
4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
4.11 Subject to the proper performance of judicial duties, a judge may:
4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge;
or
4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
4.12 A judge shall not practise law whilst the holder of judicial office.
4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is

made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY
Principle:
Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
Application:
5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:
COMPETENCE AND DILIGENCE
Principle:
Competence and diligence are prerequisites to the due performance of judicial office.
Application:
6.1 The judicial duties of a judge take precedence over all other activities.
6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION
By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS
In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:
"*Court staff*" includes the personal staff of the judge including law clerks.
"*Judge*" means any person exercising judicial power, however designated.
"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.
"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

A Last Thought

"*Ours is a fine profession: it is the pursuit of justice and of truth, and these are surely well worth pursuing for their own sake, regardless of reward. And they should be pursued, too, regardless of consequences. He is but a poor member of that fine profession who dares not undertake a case in which he believes because he knows it to be unpopular, or, if he be a judge, hesitates to give a judgement because he thinks it would not be applauded by the newspapers or might offend powerful interest*s." Judge R.P.B. Davis in the foreword to Herbstein, J.L. de V. van Winsen, J.D. Thomas and A.C. Cilliers 1966 *The Civil Practice of the Superior Courts in South Africa*, 2nd Edition.