



JOASA



NEWSLETTER

President's greetings



February and March have been very busy with training. JOASA did a training on the Domestic Violence Act during the weekend of the 20th and 21st of February which proved very successful. It is hoped that this training will be rolled out to the various provinces. The National Credit Regulator, assisted by Justice College, sponsored three training workshops on the National Credit Act, with emphasis on debt rescheduling. Two conferences have already been held in KwaZulu Natal and the Western Cape, and the third one will take place in May in the Free State.

JOASA is hoping to have more workshops and will keep members informed.

On behalf of JOASA I would like to thank all the sponsors who have made these workshops possible.

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The Labour relations Committee is still investigating options of moving over to PARMED and the possibility of moving our pension out of the GEPP. Members will be informed of the progress in this regard.

May will be election month for JOASA and I request members to please attend the provincial AGMs. This will ensure that your vote will put the provincial executive committees you seek in place.

I wish all the candidates who will be standing at National level for president and vice president much success.

To all the members who will be standing for provincial chairpersons, secretaries and treasurers JOASA needs your expertise and help.

JOASA Greetings

Dario Dosio
President of JOASA

Contact e-mail addresses of the provincial chairpersons:

Province	Chairperson	e-mail
EASTERN CAPE	Mr N. Joemath	NJoemath@justice.gov.za
FREE STATE	Mr T.J Mamburu	ThMamburu@justice.gov.za
GAUTENG	Mr X Zeka	XZeka@justice.gov.za
KWAZULU NATAL	Mr A. Ntshangase	ANtshangase@justice.gov.za
LIMPOPO	Mrs B Dzivhani	BDzivhani@justice.gov.za
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WESTERN CAPE	Mr P. Govender	PGovender@justice.gov.za



NATIONAL OFFICE BEARERS



*President
Dario Dosio*



*Vice President
and Webmaster
Vincent Ratsibvumo*



*National Secretary
Mosidi Moleleki*



*National Treasurer
Colleen Collis*



*Assistant National Secretary
Nozipho Mncube*



*Assistant National Secretary
Justice Zeenat Carelse*

AGENDA OF EVENTS



UPDATES ON EVENTS IN THE PROVINCES

PROVINCIAL AGM DATES

Gauteng	28 May
Free State	14 May
Western Cape	21 May
Limpopo	28 May
Kwazulu Natal	28 May
Northern Cape	27 May
Mpumalanga	29 May
North West	14 May

Bereavement

Mr. Gumede in Kwazulu Natal passed away on 05 February 2010. He was buried on 13 February 2010.

JOASA extends its condolences to the family and friends of Mr Gumede.



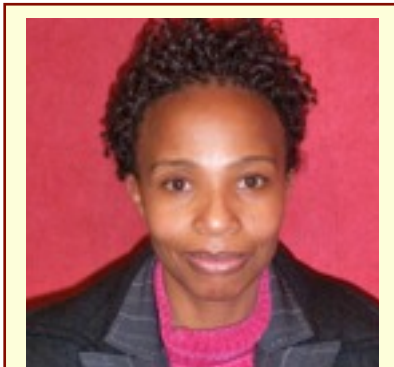
SECRETARIAT

The secretariat ensures that the interests of members are dealt with and resolved. Please continue to keep the National Secretary and the provincial secretaries informed of your work related concerns in order that we may seek ways to address these issues.

The e-mail address of the National Secretary is MMoleleki@justice.gov.za

The two assistant secretaries are: Zeenat Carelse and Nozipho Mncube ZCarelse@justice.gov.za

NMncube2@justice.gov.za



*National Secretary
Mosidi Moleleki*

WEBSITE

The webmaster, Mr Ratshibvumo encourages members to forward interesting articles or cases to him in order that he may place them on the website for the benefit of all the members.

Colleagues who have written good judgements which could be beneficial to others please forward to the webmaster.

Contact details webmaster VRatshibvumo@justice.gov.za



Webmaster

NATIONAL EVENTS

Training on the Domestic Violence Act

On the 20th of February and 21st February a training conference was held at the Joburg Theatre complex entitled “The courts and domestic violence – strengthening the courts’ application of the Domestic Violence Act”



Lisa Vetten, Researcher and policy analyst, Tshwaranang Legal Advocacy Centre

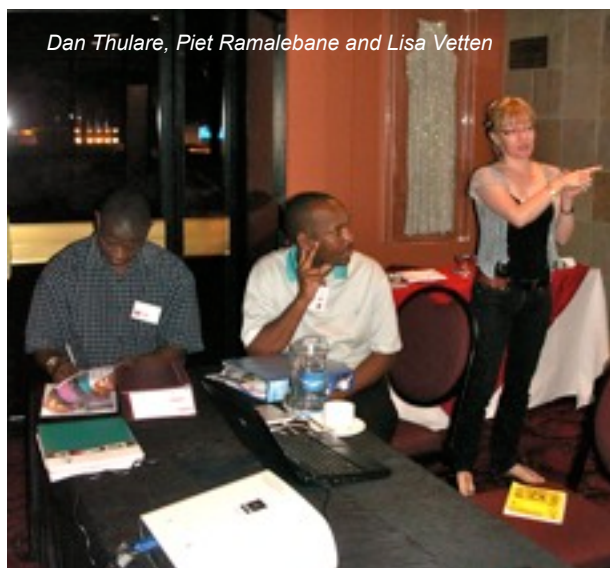
The President of JOASA opened the conference and thanked the sponsors namely, Tshwaranang Legal advocacy centre and Irish Aid.

Lisa Vetten discussed aspects pertaining to situational couple violence, violent resistance, intimate terrorism and Mutual violent control. The situational couple violence dealt with one party being violent and controlling and the other party being non-violent or violent and non-controlling. Nditsheni Maanda, a victim of

domestic violence and who works at the NISAA, Institute for Women’s Development, explained her experiences how she was dealt with in a Gauteng court. She explained the types of questions she was asked and that she felt the door was closed in her face before she had a chance to explain herself. She explained the treatment of the clerk as being very disheartening and that the clerk of the court assessed her case and said she had no prospects of proving her case. She explained how terrible that made her feel when she was relying on the legal system to help her.

*Nditsheni Maanda*

A panel session then took place consisting of the following presenters, namely, Lisa Vetten, Asha Ramlal, (Senior Magistrate, Ethics division Magistrates Commission), Magistrate Piet Ramalebane, Daveyton Senior Magistrate Daniel Thulare, and Magistrate Sidette Kotze.

*Dan Thulare, Piet Ramalebane and Lisa Vetten*

Lisa Vetten, gave an example how woman abused by their male partners were very likely to be economically dependant on their partners. Men who were seeking protection from intimate female partners were not generally economically dependant on those women. She gave examples of who is not using the domestic violence act, namely, younger children, same sex-couples and people with disabilities, or woman who cohabitate. She also dealt with return of services. She stated there is no “means” testing in place at courts. In a few districts sheriffs serve but most

often service is effected by police. Sheriffs may be faster than police in serving orders. A major concern was raised that in some courts, clerks were asking woman to serve the orders. She also expressed a concern that in some courts applicants were not receiving warrants of arrest when the final orders were made. The following orders are rarely granted, namely, emergency monetary relief, removal of weapons and eviction. She stated some courts are more likely to give you a final protection order than other courts.

Asha Ramlal spoke about counter orders, weapons, maintenance, the sheriff, the police, service and means testing. She explained that record keeping is a contentious issue. She said it is imperative to keep a record. Many of the documents are served and they are just kept there. On the return date there is no return of service. They land up in the clerks office without getting into the file. The police are requested to serve but often the woman goes to serve the document. Even if the clerk of the court has been paid woman applicants may still be asked to go and serve the document. A fixed arrangement should exist with the sheriff that at a certain time the sheriff should come to collect the warrants and that one clerk is held responsible. It is important for people to be aware of the different types of interpersonal relationships.

*Asha Ramlal*

Daniel Thulare spoke about a link between civil and criminal procedures. He spoke about African indigenous jurisprudence. He said it is difficult to separate our family law into civil or criminal law. He stated that he does not see a criminal and civil process, but one process which introduces one new process. When one looks at section 2 and regulation 2, already at that stage, when a police officer visits a domestic violence scene, there is an obligation on the police to explain the contents of the act. Contemporaneously, the police must state you have a right to lodge a criminal complaint and you have a right to lodge an application in the family court. There must be a copy of the regulation and act in the police's van. When a person comes to the court, the clerk at the family court is under obligation to repeat the information that they have a right to lodge a complaint. He indicated that you can make an order for emergency monetary relief but refer the applicant to the maintenance court to continue the maintenance proceedings until they are finalized. The effect of the interim monetary relief is that it will remain in force until it is suspended by a maintenance order.

Sidette Kotze spoke about access and custody, and eviction of the respondent. She followed a more non-legalistic approach. She stated that magistrates should be aware of systemic systems acting against woman. By the time a woman applicant gets to the court she is desperate for assistance. She stated that when one finds the wife and children are traumatized, one may consider evicting the man out of the house for a month and then bringing the parties back after a month, together with reports from social welfare officers to see if matters have been resolved or not. Although the issues of access can only be

determined by the high court, she did say that temporary orders may be made for a short time. Piet Ramalebana spoke about getting the procedures right, completing and filing forms correctly.

Magistrates need to make a difference in regard to filling the forms. He indicated that there are no court orderlies for family and civil courts. He raised questions around the need how to transfer files from one court to another. He spoke that in urban environments certain challenges were presented which do not manifest themselves in rural areas.

Soma Naidoo addressed the magistrates on "Making courts work and working in partnership, a view from magistrates". She spoke about peer review and interaction with magistrates, checking orders and creating training programs every last Friday of the month. She stated that the administrative staff who is usually the first point of contact at the family courts for members of the public, sometimes suffer the kind of trauma and abuse that magistrates are shielded from. She stated that in Durban they have actively worked at building a relationship with all the role players, i.e. the administrative staff as well as the prosecution, in the family courts. Once every 3-4 months she calls a meeting of magistrates, prosecutors and administrative staff. These meetings allow for suggestions for improvement in the family courts.

Measures that have been put in place are:

- The establishment of a central diary of all matters, to ensure that matters set down, will proceed.
- Strict monitoring of a case flow management by ensuring that return dates in domestic violence matters are not more than one month after the date on which the interim order was granted.
- Each maintenance officer is required to robe and appear before the magistrate in court, whereby he or she indicates whether the matter will be proceeding or not and reasons therefore. If a matter is to be postponed it is done immediately. This helps service delivery by either excusing members of the public and distilling the court roll and also ascertaining



whether another magistrate will be required to assist with matters.

She indicated another practice at Durban courts is peer review. This is done once a week. This will enable for errors, discrepancies and defective orders to be rectified and for the magistrate concerned to receive some guidance how to prevent the errors from occurring.

She indicated the last Friday of the month is reserved for training. This ensures that uniformity of practice is established, thereby avoiding “forum shopping” by certain legal practitioners and maintenance officers. The training sessions also address changes in legislation and new case law.

She indicated that meetings between magistrates and key role players like social workers and social work agencies who interact with Family courts also proved very useful to overcome any possible problems.



Tshifhiwa Maumela and Soma Naidoo

Mr Maumela addressed the magistrates on domestic violence and customary law practices. He said that only elders can ask for the return of the labola and not the man. He talked about burial customs and that they must not be confused with the inheritance of the estate. He addressed issues pertaining to the removal of a deceased man's body to be buried in ancestral ground and how protection orders play a role in this regard.

Sidette Kotze, spoke about sanctions against domestic violence, including the use of mediation. She stated that as a magistrate you must stay involved with the matters, She stated that periodical imprisonment was effective. Suspended sentences with orders that people report to SANCA was also very effective but you need people to follow up. She indicated that

mediation must be done by the experts. Family mediation is a highly specialized field and we should refer it to NICRO if possible.

Mike Batley from the Restorative Justice Centre spoke about some of the key concepts of restorative justice, namely the 3 pillars focusing on (1) Harms and needs, (2) Obligations to put things right and (3) engagement of stakeholders. He spoke about programs including some type of life skills program. He gave some case studies in Atteridgeville. Most of the programs originate from referrals of cases of serious assault. He stated that one must focus on harms and needs, address obligations, involving stakeholders eg victims, offenders and communities.



Mike Batley, Restorative Justice Centre

The workshop was a great success and JOASA would like to thank everyone who was involved and especially the trainers and sponsors.



Training on the National Credit Act - Kwazulu Natal – Umhlanga

The conference was held at the Protea Hotel Umhlanga from 6-8 March 2010. The president of JOASA opened the conference and gave an outline why the training was so important.

Mr Peter Setou, Senior Manager for Education and Strategy of the National Regulator did a presentation on the introduction and functions of the National Credit Regulator. He stated that the National Credit Act is there to promote a fair and non-discriminatory approach. His role was to show the activities that the National Credit Regulator does in trying to encourage debt counseling.



Peter Setou, Senior Manager for Education and Strategy of the National Regulator

He stated that debt counseling was born in 2007.

The aim is to assist the over indebted consumer. For some role players in the credit market this was an unwanted baby.

He stated that there is a 1.1 trillion consumer credit provided to 17 million consumers, consisting of 36 million accounts, banks constituting 90% of the total credit matters .

He stated the National Credit Regulator must give statistics to assist Government. He stated there has been a dramatic decline in gross credit granted.

R51.7 billion credit was granted in 2009 to 3.9 million agreements.

47% of that credit is in Gauteng, Western Cape is 15%, and Kwazulu Natal is 13%. There is a decline in credit being granted. The most significant declines have been in mortgages and motor vehicles.

He stated there is a decline in credit applications.

Consumers are also more careful in applying for credit.

Applications and Rejection rates.

He stated that consumer demand for credit is fairly static.

Credit Bureau Statistics

He stated that 18 million credit is active for consumers.

2 million people have credit records which has deteriorated over the last two years. Nearly 50000 people are being added every month to the impaired category. If 50000 people are joining the impaired category, there is a need for people to go to debt counselors.

He stated that reports by the National Credit Regulator are shared with Government as the NCR forms part of the multi task committee.

He indicated that protection of housing is one of the priorities and the NCR is addressing Government to come up with the mechanisms how primary residences can be saved.



Magistrates who attended the NCA training in Kwazulu Natal

Role of debt Counseling

He indicated South Africa does not have a proper “personal insolvency mechanism”. The US, UK and EU have a range of different mechanisms for personal insolvency. The mechanisms in SA are outdated and ineffective.



Causes of debt stress and implications in the current environment

He indicated that causes of debt stress is reckless and over extended borrowing.

External factors like loss of income, relationships breaking up and death due to HIV and cancer also contribute to this.

Debt Counseling



He indicated that 1571 debt counselors are registered and 5 independent payment distributors. There are 140000 applications for counseling growing at a rate of 9000 per month.

42000 consumers are making payments to the amount of 150 million per month.

He stated that it is in our interests that debt counseling works.

He stated there are criticisms that debt counseling is seen as a haven merely to hide behind. He stated that the message of the NCR to credit providers is that when it is clear consumers are hiding behind debt counseling, they must terminate debt counseling and proceed with legal action.

Problems with Debt counselors

He stated there are problems with debt counselors in that some debt counselors are taking fees and not doing any work.

Challenges in resolving cases

1. Certificate of balance, not provided or late



2. Unrealistic payment expectations. Unsecured creditors unreasonable. Competitions between products. Can't find settlements.
3. Not canceling old debts orders.
4. Preventing hearings in court.
5. Interest term extensions and capital write-off

A task team has been created to investigate problems with banks, debt counseling and payment arrangements.

Magistrate Court Processes



Magistrates who attended the NCA training in Kwazulu Natal

He stated that the difference between the approaches of different courts is increasing costs and adding to the confusion.

NCR implemented a range of interventions to support debt counseling

1. Training and support
2. NCR capacity – NCR appointed special call centre agents and complaints officers specializing in debt counseling
3. Payment distribution – NCR accredited specialized payment distribution agencies. To separate debt counseling from payment distribution. To limit risk fraud and theft of consumer payments.
4. Audits and inspections

Conclusion



Magistrates who attended the NCA training in Kwazulu Natal

Impact of NCA – has curbed excessive credit extension, creating a basis for lower but more sustainable credit growth.

Mareesa Erasmus, who is a registered debt counselor with the National Credit Regulator and who works at the Law clinic gave a talk on the problems that debt counselors are

experiencing. She indicated that debt counselors had no guidance when they started off. She highlighted the various role players that the debt counselors need to work with, namely (1) consumers, (2) Credit Providers, and (3) Collectors.

She stated that she looks at each case



Mareesa Erasmus, Head of Research and Short Courses at the University of Pretoria Law Clinic

individually. She stated that consumers often relinquish responsibility to debt counselors. She stated that it is often difficult to follow up and sometimes consumers don't give you all the documents so you can't really help them.

She dealt with credit providers and the problems she encounters with them. She also indicated that the procedure followed in court is unclear for debt counselors. She indicated that meetings between court personnel and debt counselors may help debt counselors bring proper applications to court. Unity amongst the courts as to a standard procedure would also help.

Abrie Duvenhage who is the founder member of the Payment Distribution Agency of South Africa dealt with the objectives of the association, mandate of the PDA's, debt review process time lines, key elements of payment distribution, industry statistics at a glance, short term goals, and PDASA stakeholder interaction.

Henro Du Plessis from Justice College dealt with four instances in which these matters came before the courts, namely:



Abrie Duvenhage, Founder member of the Payment Distribution Agency of South Africa

- a) Applications i.t.o Section 86 (7)(a) read with Section 86 (9) and 87(1) (Debt Counselor rejects application – consumer brings in person.)
- b) Consent order i.t.o Section 96(7)(b) read with Section 86(8)(a) regulation 24(9) and section 138(1).
- c) Application i.t.o Section 86(7)(b) read with Section 86(8)(b) and 87(1) (consumer not over indebted but experienced financial difficulty)
- d) Application i.t.o Section 86(7)(c) read with section 86(8)(b) and 87(1) (Proper debt rescheduling application by debt counselor).

He proceeded to train the magistrates on “who is the applicant”, “jurisdiction”, “no monetary limit”, “Service”, Availability of Debt Counselor”, “Contribution to Common Household”, “Application - Formal Requirements and Affidavits”, “hearing”, “Court Orders”, “Consent orders”, “Cost Orders”, “Emolument Attachment orders”, and “Termination of Debt Review”.

The training was a great success and JOASA would like to thank Mr Peter Setou, Ms Maryke Steynberg, Ms Mareesa Erasmus, Mr Abrie Duvenhage, Ms Thandekile Qinga, Mr Henro Du Plessis, Mr Arvin Chaitram, and Mr Steven Holtzen for all their assistance.



Henro Du Plessis



Arvin Chaitram



Training on the National Credit Act - Western Cape – George

During the weekend of the 27 and 28 of March, a successful training workshop was once again presented with the sponsorship of the National Credit Regulator and in conjunction with Justice College in George.



Magistrates who attended the workshop





*Peter Setou, Senior Manager for Education and Strategy,
National Credit Regulator*



*Mareesa Erasmus, Head of Research and Short Courses at
the University of Pretoria Law Clinic*



*Abrie Duvenhage, Founder member of the Payment
Distribution Agency of South Africa*



Steven Holtzen

PARMED

JOASA would like to thank all the magistrates who completed the PARMED survey.

Unfortunately there was a very poor response. The majority were in favour of moving to PARMED.

There were queries that were received from the members pertaining to :

- Whether magistrates would be eligible for the $\frac{2}{3}$ (two thirds) subsidy,
- Whether the subsidy would be over and above our package (as with Judges / other Office-Bearers),
- Whether the subsidy was payable for lifetime,
- Whether the subsidy could be reduced.
- Whether there would be waiting periods / exclusions in respect of members and / or their dependants with regards to previous / existing medical conditions,
- Whether there would be any penalties to join,
- Whether medical exams / tests would be required before acceptance,
- Whether chronic diseases and medicines were limited to PMB, or additional / extended list e.g. Major Depression, GAD, etc.?
- Whether the 300% of NHR paid and 100% in-hospital consultations, whether PARMED would also pay in respect of medicines inclusive of out-hospital medication,
- Whether years working as a prosecutor would be recognised as years of experience to fall under a certain level of the subsidy,
- Whether the subsidy would be payable even if NHI kicks in,
- Whether magistrates who had adult child dependants on current Medical Aid would be allowed to remain as dependants with PARMED and what exclusions would be applicable.
- Members need not become agitated as JOASA is merely looking at the feasibility of joining PARMED or not. Magistrates can only become members once the entire group of magistrates is happy to move over.
- A special word of thanks to Wayne Muller who assisted in compiling the results from the surveys sent out to the Magistrates.

NATIONAL EXECUTIVE COMMITTEE MEETING

The next meeting is 8 May. Please advise your provincial representatives of any matters which need to be placed on the agenda.

INTERNATIONAL CONFERENCES

International Association of Judges Conference - Benin

The African Regional Group of the International Association of Judges will be holding its meeting from 21 July to 25 July 2010 in Cotonou, Benin.

The inaugural topic of the meeting will be the following

“Judicial Time and the Issue of Urgency.”

Suggested sub-topics are:

1. Justice and Time;
2. Ethics and Judicial Urgency;

3. Treatment of Urgency;
4. Which Jurisdictional Policies vis-a-vis Urgency;
5. Treatment of Urgency in Civil and Criminal Cases.

Members of JOASA who would like to attend must complete the attached form and hand it to their provincial chairpersons by 12 May 2010.

International Association of Judges Conference - Senegal

The meetings of the Central Council of the International Association of Judges will be held in Dakar (Senegal) from the 7th to the 11th of November 2010.

Members of JOASA who would like to attend must complete the attached form and hand it to their provincial chairpersons by 12 May.