



JOASA



NEWSLETTER



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President's greetings



Dear colleagues,

With JOASA elections taking place in the various provinces this month, I urge you to please attend the various provincial AGM's in order that your concerns may be raised, and that your respective chairpersons may bring these issues to the next NEC meeting scheduled for 11 July 2009. The AGM's are also a great way to meet with colleagues that you have not seen for some time. All newsletters may be found on the JOASA website under "publications".

JOASA Greetings
Dario Dosio

President of JOASA

Contact e-mail addresses of the provincial chairpersons:

| Province | Chairperson | e-mail |
|---------------|------------------|--|
| EASTERN CAPE | Mrs T. Olivier | TOLivier@justice.gov.za |
| FREE STATE | Mr T.J Mamburu | ThMamburu@justice.gov.za |
| GAUTENG | Mr C Nethengwe | CNethengwe@justice.gov.za |
| KWAZULU NATAL | Mr A. Ntshangase | ANtshangase@justice.gov.za |
| LIMPOPO | Mrs B Dzivhani | BDzivhani@justice.gov.za |
| MPUMALANGA | Mr M. Essa | MEssa@justice.gov.za |
| NORTH WEST | Mr B. Chulu | BChulu@justice.gov.za |
| NORTHERN CAPE | Mr F. Erasmus | FErasmus@justice.gov.za |
| WESTERN CAPE | Mr P. Govender | PGovender@justice.gov.za |

AGENDA OF EVENTS



The Provincial AGM dates are:

- Kwazulu Natal is 26 June
- Gauteng is 26 June
- Western Cape is 19 June
- Free State’s provincial AGM was cancelled on 12th June. Members will be informed of the new date.
- Eastern Cape is 19 June
- Limpopo is 26 June
- Mpumalanga is 6 June
- North West is 19 June
- Northern Cape’s provincial AGM was cancelled on 21 May. Members will be informed of the new date.

Mpumalanga Province

JOASA in conjunction with Jhpiego hosted a workshop from 5 to 7 June 2009.

The National AGM will be from:

30 October to 1 November 2009

JOASA WEBSITE

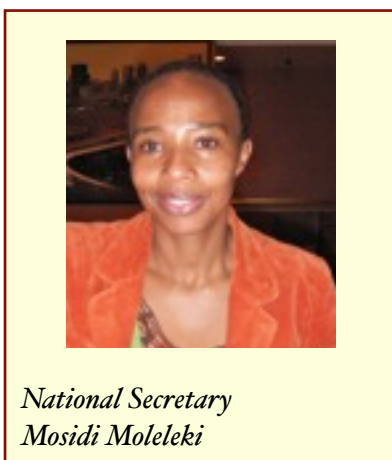
The website is being updated daily and members are urged to make use of the website to update themselves in respect to recent legislation, recent case law, headline news, and matters pertaining to cross-transfers, training and salaries. The website address is www.joasa.org.za



*Vice President
and Webmaster
Mr Vincent Ratsibivumo*



SECRETARIAT



*National Secretary
Mosidi Moleleki*

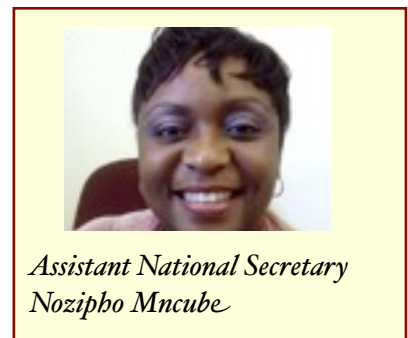
The month of June is election month for JOASA.

Please ensure that you attend in order to elect the provincial executive committee that will serve your interests.

The secretariat ensures that the interests of members is 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



*Assistant National Secretary
Nozipho Mncube*

REPORT ON SALARIES

Mr Peter Makapan, the secretary of the Independent Commission for the Remuneration of Public Office Bearers has informed JOASA that the names of the five commissioners to be appointed has been forwarded to the President of South Africa in order that he may sign their appointment. The delay has been caused by the elections which took place this year.

Mr Makapan has informed JOASA that the Legal Services office in the Presidency has been briefed to bring the urgency of the appointment of the five commissioners to the attention of the President.

Mr Makapan is being phoned by JOASA on a regular basis to request an update in this regard.

Mr Makapan has advised that JOASA will be invited to a stakeholders meeting soon.

Members will be kept abreast of the latest developments.

TREASURY

The National Treasurer has requested that all members ensure that their membership fees are paid up in order to be eligible to vote at the upcoming provincial AGM's.

In order to hold office on a provincial executive committee, you need to be a fully paid up member of JOASA.



*National Treasurer
Colleen Collis*

UPDATE FROM THE JOASA NATIONAL CO-ORDINATOR OF JHPIEGO

Ms Colleen Collis – National Co-ordinator of Jhpiego workshops in conjunction with JOASA, reports as follows:-

“On the 29th May 2009 a workshop was held at the Pretoria North Magistrate Court (JOASA Gauteng) on HIV/AIDS. The said workshop was sponsored by Jhpiego and the Centre for the Study of Aids (CSA) from the University of Pretoria. The testing for HIV and the Wellness program was conducted by the Centre for Disease Control (CDC).

This is the second workshop of a similar nature conducted in the Gauteng Province. The first one having taken place during July 2008.

The number of attendees totaled 139 persons comprising of Magistrates, Prosecutors and the Administrative staff forming part of the Pretoria Cluster.

The topics covered by the facilitators, included HIV/AIDS and TB Infections, HIV/AIDS and the LAW, an overview of the functions of the NGO called Jhpiego and an address by a Motivational Speaker.

A total number of 60 persons tested for HIV and the wellness programme offered.

The workshop was supported and attended by the Acting Chief Magistrate, Mr. Maboho, and the Chief Prosecutor of the Pretoria Cluster.

The President and Vice President of JOASA were also in attendance.

These Workshops on HIV/AIDS in conjunction with Jhpiego are being continued Nationally, and in this regard workshops were already conducted in the Free State Province during March this year and in the Eastern Cape during May this year.”



Colleen Collis



UPDATE ON EVENTS IN THE VARIOUS PROVINCES

EASTERN CAPE

Training workshop in May



During the weekend of 16-19 May 2009, JOASA Eastern Cape had a successful conference at the Mpekweni Beach Resort, close to East London and Port Alfred.



*Chairperson of JOASA – Eastern Cape
Mrs Twanet Olivier*

The Chairperson of the Eastern Cape reports as follows:-

“The Eastern Cape Province is honoured to report that on 15 to 17 May 2009, JOASA, in conjunction with Jhpiego and CSA/University of Pretoria hosted a workshop on “Training of Magistrate’s on HIV/AIDS, Human Rights and the Law” at Mpekweni Beach Resort.

The workshop was attended by 26 magistrate’s from various offices, and 3 facilitator’s, Mr Jason Wessenaar, Ms Nyasha Chingore and Ms Mianko Ramaroson.

We had the pleasure of showing true Eastern Cape hospitality to Mr Dosio and Ms Collis who attended the workshop, a gesture much appreciated by members of JOASA, in the Eastern Cape.

The workshop was extremely educational and insightful, and well facilitated. The first day was spent to determine the objectives of the participants, basic facts on HIV/AIDS. Most concerning fact was that 1600 people are infected in South Africa, daily. It is cause for great concern. Currently Swaziland has the

highest rate of infection, followed by Botswana, Lesotho, Zimbabwe and South Africa.

The various stages of HIV/AIDS was discussed, ie. Rapid Stage, Slow Progressors, Non Progressors and the Long term Non Progressors. Discussing the stages helped to equip judicial officers in understanding the illness and the effects of it on the human body. SHOCKING FACTS : Synergy between TB and HIV:

AIDS kills 8 000 people daily, TB kills 5 000 people daily, and TB causes at least 11 % of AIDS related deaths.

Stigma attached to living with HIV/AIDS was also discussed, how does stigma develop , and why HIV has been stigmatized, characteristics of diseases that are stigmatized, and how stigma relates to the other forms of discrimination.HIV/AIDS and human rights were discussed, including the SA Bill Of Rights and HIV/AIDS related Human Rights.

HIV/AIDS AND THE LAW / THE CRIMINAL JUSTICE SETTING :

Imprisonment, bail and sentencing :

It was a very controversial topic to discuss but extremely relevant to judicial officers.

Questions asked and debated :

Should the offenders status be considered a mitigating factor for purpose of sentence / bail

Is the stage of infection a relevant factor to consider

Is the limited life expectancy of the offender a relevant factor to consider

When sentencing, should you consider the effect of conditions in prison on his/her health

Is the availability of treatment and other medical facilities in prison a relevant factor.

As you may note, the above questions are indeed “food for thought” and relevant in our day to day lives.

In conclusion JOASA Eastern Cape would like to thank Jhpiego and CSA/University of Pretoria for the excellent work done and the devotion and dedication shown in the training of amongst others, the judicial officers.

Thank you for extending your training to the Eastern Cape.

Thank you to all the members who attended the weekend and participated in the workshop.

Lastly, a big thank you to Mr Joemath in assisting to secure accommodation for the workshop.”

-Twanet Olivier (Chairperson Eastern Cape)



Pictures of the magistrates who attended the workshop



GAUTENG

Training workshops in May

On the 29th of May, JOASA – GAUTENG held training workshop at the Pretoria North Magistrate Court.



Chairperson of JOASA Gauteng



Acting Chief Magistrate of Pretoria North Magistrate Court, Mr Samuel Mulalo Mabobo.

The Gauteng Chairperson reports as follows:-

“Pretoria North Magistrates’ Court hosted a workshop on HIV/AIDS. The workshop was supported and funded by Jhpiego. I report that the workshop was a resounding success. The workshop was well attended and the Pretoria North Magistrates’ Court community came out in droves to support this initiative. The entire management of the Court was in attendance and encouraged everyone to participate. We are forever indebted to this wonderful community of people for their support. Prosecutors around the Pretoria sub cluster threw their full weight behind this initiative. Their participation shows the value of co-operation by all stake-holders in justice sector.

We were encouraged by the use by all people of the freely available counselling and testing facilities provided by Jhpiego. We believe that we were able to achieve our goal of educating people about HIV/AIDS and its impact on the administration of justice in a post-apartheid society.”



Dumisani Mthembu, (picture left) VCT Specialist Centres for Disease Control and Prevention with Jason Wessenaar, (picture right)





JOASA – GAUTENG TRAINING WORKSHOP ON IMMIGRATION

JOASA Gauteng together with the Department of Home Affairs held a training on the 29th of May 2009 at the conference centre Diep in die Berg, Pretoria.



The Gauteng Chairperson, Mr Clarence Nethengwe reports as follows:-

“The PEC also held a workshop on immigration laws and their impact on the administration of justice. The workshop was funded by the Department of Home Affairs. This event was held at Diep ‘n die Berg in Pretoria East. We had expected 25 magistrates from around the province.



We are happy to report that 18 magistrates attended the event. This event was initially scheduled to take place on the 27th of March 2009. However, due to unforeseen problems encountered by the presenters we had to postpone it. At the time of the postponement, all payments had been made to secure the venue and other logistics. The 29th of May 2009 was the only available date and we were forced to use it.



The content of the workshop was of the highest quality and our magistrates fully engaged the topics. The general report by most attendees was that we need more of this type of workshop and to this end we have started to arrange a three day event.



Hopefully, we will bequeath to the incoming PEC a good legacy. I would like to thank all magistrates who took time out of their busy schedules to attend this workshop. Above all I thank Nozipho Mncube for her sterling work in encouraging members to attend the workshop.



In conclusion I thank the Department of Home Affairs for funding this initiative and we look forward to more engagements in future.”



MATTERS OF INTEREST

JOASA

Robbing of advocates in the lower courts

The matter pertaining to the robbing of Advocates in the lower courts has been addressed by JOASA National, together with the Chairperson of JOASA Western Cape, with the Chairperson of the General Council of the Bar, Advocate Patric Matshaulana.

A meeting was scheduled between JOASA and the Chairperson of the General Council of the Bar on the 6th of June.

The Chairperson of the GCB has indicated that this matter will be placed on the agenda of their annual general meeting scheduled for the 17th of July 2009.

Detailed minutes of the meeting will be forwarded to the members of JOASA.

DRAFT REGULATION WORKSHOP

Report on the workshop hosted by the service conditions committee of the Magistrates Commission on 19 to 21 May 2009: draft regulations of the lower court judiciary: consideration of amendments

The Chairperson of the Labour Relations Committee, Mr Ron Laue reports as follows:-

[1] The following persons attended: Mr CJ Barnard, Mr BJ Stapelberg and Mr CWF Booyen (Quality Assurance Office); Mr A

Bekker; Mr H Louw and Mrs J Wessels (ARMSA); Mr D Dosio, Ms J van Schalkwyk and Mr R Laue (JOASA); Mrs A Motlekar (Chief Magistrates' Forum); Mr M Djaje (Regional Court Presidents' Forum) and Mrs A van der Walt (DOJ&CD: Subordinate Legislation). Mr Stapelberg chaired the meeting.

[2] This was a continuation of a similar meeting held last year on which Mr A Petersen reported to members.

[3] The draft regulations, which included submissions from members and JOASA's labour relations committee, were circulated to members and formed part of the discussions at the workshop, together with submissions made by the other representative groups in attendance. Unfortunately the Commission did not circulate the submissions it had received from the various representative groups amongst the workshop participants before the meeting began. It would facilitate meaningful engagement if this could be done well in advance of any future workshops.

[4] Those parts of the regulations dealing with appointments and ethics stand in abeyance pending the issuing of a policy by the Magistrates Commission on those matters. The Commission did call for submissions on the appointment process, separately and in relation to a working group which had been previously engaged in considering proposals that had been circulated for comment. Some of these submissions were received very late. It is, however, not clear whether these submissions will form the basis upon which the Commission



(Pictured left to right) Mr Vincent Ratsibivumo (Vice-President – JOASA), Mr Preggy Govender (Chairperson, Western Cape – JOASA), Adv Patric Matshaulana (Chairperson of the General Council of the Bar) and Dario Dosio (President – JOASA)

will formulate its policy and in the absence of a policy it is difficult to motivate and formulate submissions for inclusion in the draft regulations at this stage. Hopefully the policy will be disseminated by the Commission for comment, whereupon it ought to be easier to address issues. Similarly, it is uncertain as to what policy will be forthcoming from the Commission's ethics committee and this also presents a difficulty with formulating submissions; for example, whether the disciplinary procedures should be aligned with judges or whether to tinker with the existing procedures. The service conditions committee is striving towards the formulation of an ethics code aligned to that for judges.

[5] Some contentious issues arose. Amongst these were submissions for defining the term "incapacity"; incorporating an administrative manual for all magistrates (currently known as the judicial manual); the deletion of draft regulation 134 (which corresponds with the current regulation 41, which gives recognition to professional societies representative of the majority of magistrates or regional magistrates). The last mentioned submission emanated from the CMF on grounds that magistrates had joined the International Association of Women Judges and the BLA. Apart from obviously limiting the constitutional right to freedom of association, the importance of enjoying recognition of such societies is reflected in The Universal Charter of the Judge, which provides:

"Art.12
Associations

The right of a judge to belong to a professional association must be recognised in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests."

Moreover, section 16 (1) (l) of Act 90 of 1993 expressly empowers the Minister to make regulations regarding the recognition of any professional society in relation to judicial officers. It was therefore not surprising that the submission was met with vigorous resistance.

[6] The draft leave regulations have finally been met with general consensus and

noteworthy is the provision for 65 days' vacation leave being afforded on completion of every 5 years' actual, uninterrupted service in the office of magistrate (on a use it or lose it basis). JOASA's proposals (set out below) concerning judicial immunity and privilege received majority support.

Judicial Immunity and Privilege

No magistrate shall be criminally or civilly liable [or be removed from office or subject to other disciplinary or administrative procedures by reason only that his or her decision has been overturned on appeal or review by a higher judicial body, or] for anything he or she has done or omitted in the exercise of his or her judicial functions, even if the act so done was in excess of his or her judicial authority or if he or she was bound to do the act omitted, unless what was done or omitted was actuated by malicious, fraudulent or corrupt intent.

Or, alternatively (and omit the words in brackets above):

No magistrate shall be removed from office or subject to other disciplinary or administrative procedures by reason only that his or her decision has been overturned on appeal or review by a higher judicial body, unless it was actuated by malicious, fraudulent or corrupt intent.

No magistrate shall be compelled, but is competent, to account to a court, tribunal or other body

on any matter in connection with the performance of his or her judicial functions, except during the course of appeal or review proceedings.

Notwithstanding anything to the contrary contained in any law, no summons or subpoena against a magistrate shall in any civil action be issued out of any magistrate's court, except with the consent of the head of that court: Provided that no such summons or subpoena shall be issued out of a higher court unless the higher court which has jurisdiction to hear and determine an appeal in such civil action from the magistrate's court, has consented to the issuing thereof.

Where the issuing of a summons or subpoena against a magistrate in a civil action

has been consented to, the date upon which such magistrate must attend court shall, in the case of an action in a magistrate's court, be determined in consultation with the relevant head of that court or, in his or her absence, the next senior magistrate of that court, and in the case of an action in a higher court, in consultation with the head of such court and the relevant head of the magistrate's court or, in his or her absence, the next senior judge or magistrate, as the case may be.

[7] There is still a measure of legal uncertainty about whether the draft regulations relating to resource provisioning and reimbursement allowances properly belong in the regulations in terms of section 16 of Act 90 of 1993 in view of a recent legal opinion from the State Law Adviser which is in direct conflict with

an earlier opinion in 2004 wherein he concluded that benefits and allowances must be determined by the President in terms of section 12 of Act 90 of 1993 and not by the Minister under section 16 of that Act. It is hoped, on the basis of an undertaking by Mrs van der Walt to look into the matter, that clarity will be given within a reasonable time."



R. E. Laue
Chairperson
JOASA labour relations Committee
25 May 2009



The Chairperson of the Labour Relations Committee of JOASA, Mr Ron Laue; President of JOASA, Dario Dosio; and the Ex-President of JOASA, Mrs Judy Van Schalkwyk



Mrs A van der Walt (DOJ&CD: Subordinate Legislation), Mr Bf Stapelberg, and Mr CWF Booyesen (Quality Assurance Office).