

JUDICIAL OFFICE 101 FOR NEWLY APPOINTED DISTRICT COURT MAGISTRATES

DM THULARE, CHIEF MAGISTRATE, CAPE TOWN; CHAIRPERSON, CHIEF MAGISTRATES FORUM

02 FEBRUARY 2020

MISTY HILLS, KRUGERSDORP, GAUTENG PROVINCE, SOUTH AFRICA

INTRODUCTION

Today you begin your walk in the path leading to your destiny. It is the date of your ordination. This is the day you come face to face with God's roadmap in the atlas of your life. It is the day on which you realize that your calling is real. Your identity, purpose, resources, relationships and time change today. You can never be the same. Your destiny is, is with and is in change. If you cannot make the paradigm shift, this is not for you.

IDENTITY

You have been a legal professional. You are experienced. Much of your actions, work and decisions may have been intuitive and in furtherance of a mandate of a client. They were meant for persuasion only. You argued the options but the decisions did not lie with you. Most of it may even have been without proper reflections and conscious deliberation, for you did not owe the nation any explanation. At best, you strived to influence decisions. Your work did not necessarily need conscious reasoning.

Today marks the formal beginning of your change. Called as a judicial officer, you decide. You decide on behalf of the country. You exercise public power. The outcomes of your judicial functions are court orders. You are clothed with the judicial authority of the State. When you speak, South Africa is speaking. You are the voice of the country. When you speak, the people must hear their own voices in your articulation. You must be their court, their judicial officer.

You are powerful. Your order and your signature can build or destroy an individual, a family, blood relations, a community, society and the country. Some get drunk from being placed in positions of power. Do not be drunk from the power that comes with judicial office. Your appointment did not suddenly imbue you with the monopoly of wisdom. It did not render everybody else a fool overnight. Be that calm, rational and consistent voice. Speak well.

PURPOSE

The Rule of Law and the Independence of the Judiciary are two fundamental pillars for the stability of a State and a country. The Government, civil society, politics and business are strengthened by and can have confidence in the State not only if there is respect for the Rule of Law, but also if there is a capable and independent Judiciary that is above corruption and does not operate with improper influence. The Magistrates' Court has a duty to ensure that the country functions effectively. This they can achieve by being impartial in processes and outcomes, and by application of objective rules known to all.

Your role is to listen, understand, identify the true issues, cut out the salient facts, analyse them, distill the facts found, research and study, set out the legal principles applicable to the issue, interpret the law, make rulings of law, apply the law to the facts found. Discuss and explain the reasons for your decision logically and with sufficient particularity. At the end, grant the relief that is just. The proceedings before you should be in writing or mechanically recorded. You are a court of record. You should be able to produce this record for purposes of quality assurance or when the proceedings before you are taken on review or appeal.

Your record should be legible enough to enable the quality assurance judicial officer or the Court of Appeal to make a determination on the proceedings. If your record has to go to the Court of Appeal, that court should on the mere consideration of your record be able to determine if the proceedings were in accordance with justice. Your judgment must be intelligible enough to enable the Court of Appeal to follow your path of travel in reasoning, which led to your order.

RESOURCES

You are called to judicial office already as a complete product of social engineering. You have preconceptions already determined if not heavily influenced by the society from which you emerge. The political outlook of that environment, your cultural upbringing, how your “people” approached issues, for instance gender and racial issues, all adds up to the paradigm within which you functioned. You are not value-neutral. Your social engineering, if left on its own, could influence your findings to the detriment of only those who do not look like or think like you.

Your social engineering determines how you see and feel about what is before you. A classic example is found in the reading of *Daniels v Scribante and Another* 2017 ZACC 13. Madlanga J and Froneman J’s respective judgments are a prime example of how philosophies and ideas differ from one another largely influenced by where, with whom, under what circumstances and how a judge grew up. It is against that background that there are objective rules that should inform the dominant paradigm, which you should understand and apply in order to contribute to a just society.

Judgment writing in the court of first instance is an individual and lonely activity. However your judgment must be part of the community of judges’ discussion. It need not be a wayward voice, simply because you are independent. It should not speak out of turn in a conversation of esteemed jurists on the problem before the courts, unless it is necessary for the attainment of justice.

Know the values of the Republic as set out in Chapter 1 section 1 of the Constitution of the Republic of South Africa Act 108 of 1996 by heart. Understand the Bill of Rights and the Rights therein entrenched. Never refer to a section in the Constitution without personally having read it. Never pass judgment on a matter in terms of a Statute until and unless you have read the Statute and its Rules or Regulations yourself. Read all the judgments, more articles in legal journals, portion(s) of the book(s), theses and dissertations applicable to the subject matter upon which you are called upon to decide. This is the art of illuminating your understanding and acquiring a deeper insight into the question before you, and can only enhance the quality of your judgments. Only where necessary for your judgment, consider what other countries are saying on the matter.

Not everything that you have read must be in your judgment. A judgment differs from a historical legal research thesis for academic purposes. The applicable legal principle should be quoted in your judgment, whether it is a statutory rule or case law. Only the most recent case of the most superior

court on the matter should preferably be referred to. Where necessary use the most recent edition of the book and the latest article(s) on the subject unless the older editions or articles articulate the proposition that you wish to advance better.

RELATIONSHIPS

The Africanists within the Christian faith have a different look at the cross, which symbolizes the foundation of their faith. It is grounded on their acknowledgement of the special place of humanity, its history and development. It respects every human being, acknowledged them as unique but also its capacity to live peacefully with others within a community. It recognizes that if left without a community consciousness, individuals become selfish. To ward off greed, the individual quest for self-preservation and advancement is contained by a communal approach, which require law.

The top end of the cross represents the appreciation that man does not know and cannot explain everything. There are simply matters beyond the comprehension of a human mind. Beyond the horizon of your eyes there is another world, and beyond what your mind can comprehend there are other truths. This explains why there is a deity, Modimo/uThixo/Unkulunkulu/God to whom other things are deferred. We are gathered here today to ordain you as a first amongst the equals, but you still remain an equal and there are authorities above you, to whom you owe deference.

The one end of the horizontal of the cross relates to those equal to you. Respect other legal professionals with whom you will work as the first amongst them in a court room. They may be wrong, but that does not make them fools. You may dislike them or they may irritate you but they deserve your respect and audience. The allegations of the commission of an offence or it being proved against them, does not make those accused less human. During the proceedings, you will have learned the name of the accused, the complainant or the witnesses. During the proceedings, please refer to them by their names or title. The Court Manager and the rest of the Administrative Support Services, including clerks and Interpreters are there to support you. They serve a different Constitutional Mandate to you. Respect our Constitution, respect their role, respect them as professionals. The courtroom in which you preside or courthouse, should not be, for others, an island of misery within a Constitutional sea because of you.

The other end of the horizontal relates to your personal resources and assets. Have a healthy relationship with material things. Have a special but healthy relationship with money. Do not live for others. Run your own race in your own lane. Accept your own personal circumstances and fit within your own skin. Do not allow yourself to be obese, both literally and figuratively. Grow, do not swell. Work towards having gravitas. Be present, do not just exist.

TIME

Time waits for no one. It stops for no one. Your excuses will not slow it down. Your indecision will not delay it. Your complaints will not stall it. Your regrets will stop it. It will not turn back and cry with you. You only have it now. Spend it with the right purpose, deeds, emotions, thoughts and people. It will never come back again. Keep moving like it [Julius Sevilla].

Keep moving to be at the courthouse at 7H45 and keep moving to leave the courthouse only at 16H15. This is what we call office hours. Keep moving to start court at 9H00. Have a tea break of 15 minutes only, between 9H00 and 13H00. It is generally between 10H45 and 11H15 and is determined by the

Head of Office. Have your lunch time between 13H00 and 13H45. Start your court at 14H00 and adjourn for the day at 16H00. Court time starts at 9H00 and ends at 16H00 with a tea break of 15 minutes and a lunch break of 1 hour in between. You will note that there is a difference between office hours and court hours. Office hour lunch is 45 minutes whilst court hour lunch is 1 hour.

Do your statistics daily. Submit them weekly or monthly as determined by the Head of Court, on the last day of that month. You have no power to make a court order that your court does not take tea breaks or lunch breaks. However, whenever circumstances so permit and under exceptional circumstances, you may initiate consensus with the other members of the Court to sit through. As individuals, the Prosecutor, the legal representative where one is engaged, the Interpreter, the Court Clerk and the Court orderlies, the accused and witness or parties and their witnesses in civil or family matters must each agree to such arrangement.

You do not have a court as a person. Your position, the magistrate, presides over a court. Your position is regulated by law and you as the first amongst equals, must respect the law. The fact that others say “As it pleases the court” in closing their address to you, does not mean that you can do as you please. Remember that you will always deserve to drink your coffee from a Styrofoam cup. It is your office that leads people to serve you in a ceramic cup. The ceramic cup is not meant for you, but for your office [New Look Organisation].

On behalf of the Chief Magistrates Forum, I congratulate you on your appointment as a Magistrate. You have worked hard to be here. Respect your hard work which led you here. Respect yourself, your family, your relatives and your community, which I have no doubt you represent. You have made them proud. Please keep them proud of your achievements and your deeds. God be with you. Good luck.

Thank you.