

RESPONSE TO CONCERNS RAISED BY THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES: SUSPENSION OF MAGISTRATES

Mr AD Schoeman, the Secretary of the Magistrates Commission, and myself were invited to brief the Portfolio Committee on Justice and Correctional Services on the Commission's objects and functions in general and more specifically on the processes to be followed in terms of the Magistrates Act, 90 of 1993 (the Act) if the Commission recommends that a magistrate be provisionally suspended from office, if removal from office is recommended and if the Commission determines to withhold the remuneration of a magistrate. The Committee was also briefed on three reports which the Minister tabled in Parliament in terms of the provisions of section 13 of the Act. It is with regard to the content of two of the reports that the Honourable members of the Portfolio Committee raised certain concerns, which concerns I will attempt to briefly set out below and to which I am responding to as requested:

The first report deals with **the provisional suspension from office of Ms RM Malahlela**, an additional magistrate at Delmas in terms of section 13(3)(a) of the Act. Ms Malahlela is still on probation. She is charged with 29 charges of misconduct which charge sheet has been duly signed by the Chairperson of the Commission. The charge sheet was attached to the report and disseminated to the members prior to the briefing.

The Portfolio Committee resolved that it was not in a position to support the provisional suspension of Ms Malahlela, pending the inquiry into her fitness to hold office and raised the following concerns:

1. That she suffered from depression and that it would not be fair to subject her to a misconduct hearing
2. That she filed a Notice of Motion at the High Court for an order declaring the Commission's decision to charge her with misconduct to be wrongful and unlawful
3. The Committee suggested that the Magistrates Commission considers to look at alternative remedies, short to suspending her from office, for instance to transfer Ms Malahlela to another office or that she be allocated administrative work.

Response:

1. Ms Malahlela's Special Psychiatrist, Dr Zako concludes in his report dated 11 October 2010 that there are no grounds on which to consider ill-health retirement due to psychiatric reasons. In his report dated 30 November 2010, Dr J Chabalala, a Psychiatrist, indicated that Ms Malahlela suffers from Bipolar Mood Disorder and that this has a profound effect on her performance as a magistrate. She however lacks the insight into the nature of her illness and completely rejected the diagnosis. She would not take her prescribed medication and not attend to treatment sessions regularly. This does not imply that she is non-functional. As long as she denies the presence of her illness she will blame her unenviable position on others. Based on the

findings as fully set out in the reports, the Commission resolved not to proceed with an enquiry into her ill-health.

2. The Commission opposed the application. Ms Malahlela has to date not taken the matter any further.
3. Ms Malahlela applied for the vacant post at Delmas and was appointed to promote transformation of the judiciary at the Delmas Court House. It is the Commission's policy not to transfer magistrates unless there are life threatening or similar circumstances or when it is in the interest of justice to do so. A judicial quality assurance assessment into her judicial work will be conducted shortly.

The second report has been tabled in Parliament for approval **to remove Mr Masinga from office** on the ground of misconduct. The Portfolio Committee raised the following concerns:

1. That Mr Masinga has not been given the opportunity to exhaust all the remedies available to him, and
2. That the disciplinary process which was followed was therefore incomplete

Response:

1. Mr Masinga took his criminal conviction of attempted murder (on 23 May 2011) and the sentence to 10 years imprisonment (passed on 16 January 2012) on appeal. The judges on appeal granted him leave to bring the matter under review. He had to file review proceedings by no later than 20 April 2013. The answering affidavit had to be filed by 31 May 2013 and his replying affidavit by 14 June 2013. The matter was enrolled for hearing on 22 May 2014 but was removed from the roll because Mr Masinga had not filed a replying affidavit. A notice of Bar was served on his attorney of record by the Director of Public Prosecutions (DPP) on 13 June 2014. Mr Masinga has not filed any response and therefore failed/refused to prosecute his appeal/review. The Commission has been advised that the DPP has approached the Registrar of the High Court for a date for the review to be heard. A date has not been set as yet.
2. The disciplinary process, which is a totally different and independent process against Mr Masinga, has been finalized. On 22 April 2014 he was found guilty of misconduct and was given the opportunity to furnish the Commission with any representations. The Commission considered his representations and resolved to recommend that he be removed from office in terms of section 13(4)(a)(i) of the Act. He was informed accordingly and has to date not taken the Commission's resolution on appeal or review.