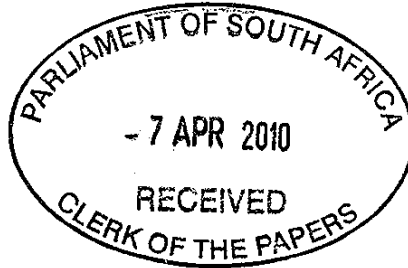




**MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

Enq: Lungisile Pakati (Mr)
Tel: 021 467 1725
Mobile: 082 905 2651
Fax: 021 467 1715



7 April 2010

Speaker of the National Assembly
Honorable Max V Sisulu
Parliament of the RSA
Cape Town
8001

Dear Honourable Sisulu

**SUBJECT: PROVISIONAL SUSPENSION FROM OFFICE OF A
MAGISTRATE: MR D JACOBS, MAGISTRATE AT CLOCOLAN**

The purpose of this tabling is to inform Parliament of the provisional suspension from office of Mr D Jacobs, a magistrate at Clocolan pending the outcome of an investigation into his fitness to hold office as a magistrate, as required by section 13 (3) (b) of the Magistrate Act, 1993 (Act no 90 of 1993).

Kind regards,

**JEFF RADEBE, MP
MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

DATE: 07/04/2010



REPORT

PROVISIONAL SUSPENSION FROM OFFICE OF A MAGISTRATE: MR D JACOBS, MAGISTRATE AT CLOCOLAN

1. PURPOSE

The purpose of this document is to inform Parliament on the provisional suspension from office of Mr D Jacobs, the magistrate at Clocolan pending the outcome of an investigation into his fitness to hold office as a magistrate, as required by section 13(3)(b) of the Magistrates Act, 1993 (Act no 90 of 1993).

2. BACKGROUND

2.1 Mr Jacobs is the Magistrate at Clocolan. He is 47 years of age and has served the Department of Justice and Constitutional Development as a prosecutor before his appointment as a magistrate.

2.2 An investigation instituted by the Ethics Division confirms that Mr Jacobs suffers from severe alcohol dependency resulting in him not attending to office hours, absenting himself from office without leave or valid cause and being intoxicated on the bench, to such an extent that he is unable to perform his judicial functions effectively and efficiently.

2.3 The Chief Magistrate, Bloemfontein reports that "no stone has been left unturned to assist Mr Jacobs. He has been sent to rehabilitation centres not less than twice. The good

results were short lived in the first process. In the second, he defaulted”.

2.4 Discussions between Mr Jacobs and two Judicial Quality Assurance Magistrates from the Commission’s office at Pretoria on 25 November 2009 and a subsequent visit to his office on 13 January 2010 in the presence of his sub-cluster head, the Magistrate at Thaba-Nchu, yielded no positive results either.

3. DISCUSSION

3.1 On 13 January 2010 the Ethics Committee of the Magistrates Commission requested Mr Jacobs to show cause why the Commission should not recommend that he be provisionally suspended from duty pending an investigation into his fitness to hold the office of Magistrate.

3.2 At its meeting held on 25 February 2010, the Commission, having considered Mr Jacobs’ response dated 28 January 2010, received on his behalf from Messrs Adrian’s and Claasen Attorneys, resolved to recommend that Mr Jacobs be provisionally suspended from office in terms of section 13(3)(a) of the Magistrates Act, 1993. The following considerations weighed with the Commission:

3.2.1 The Commission is of the view that the existing evidence against Mr Jacobs is of such a serious nature as to make it inappropriate for him to perform the functions of a magistrate while the allegations are being investigated.

3.2.2 Mr Jacobs has been admitted for rehabilitation at least twice. He was during the past 3-5 years advised on many occasions by his colleagues to seek professional help. Discussions held with him as recent as January 2010 appeared not to yield any results either.

3.2.3 In disciplinary matters of a similar nature, the Commission resolved to recommend that the magistrate be provisionally suspended from office. The existing evidence against Mr Jacobs is of such a serious nature that it would justify his removal from office should he be found guilty of the misconduct charges which are to be preferred against him. He is at present an embarrassment to the judiciary, especially at Clocolan. A temporary placement/utilization at another office, as proposed by him, would not address the problem either.

4. AUTHORITY TO PROVISIONALLY SUSPEND

In terms of section 13(3)(a) of the Magistrates Act, 1993 (Act no 90 of 1993) the Minister, on the advice of the Magistrates Commission, may provisionally suspend a magistrate from office if –

- (i) “the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and

- (ii) An investigation has been instituted by the Commission into such magistrate's fitness to hold office."

A report in which the provisional suspension and the reasons therefore are made known, must be tabled in Parliament by the Minister within 7 (seven) days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 7(seven) days after the commencement of its next ensuing session (section 13(3)(b) of the Act).

5. **CONCLUSION**

In the light of the foregoing, I decided to provisionally suspend Mr Jacobs, the Magistrate at Clocolan from office with immediate effect, pending the outcome of an investigation into his fitness to hold the office of a Magistrate.

6. This report is hereby submitted for consideration by Parliament in terms of section 13(3)(c) of the Magistrates Act, 1993.

Given under my hand at Pretoria on this 30th day of March 2010.

J. Raedebe
MR J T RADEBE, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT



**MAGISTRATES
COMMISSION**

**LANDDROSTE-
KOMMISSIE**

P O BOX/POSBUS 9096, PRETORIA, 0001 ☎ (012) 325 3951 FAX/FAKS (012) 326 0094

Mr D Jacobs
The Magistrate
Private Bag X05
CLOCOLAN
9735

Reference : 6/5/5/2: 13/2009
Verwysing

Enquiries : Mr J Meijer
Navrae

Date : 13 January 2010
Datum : 13 January 2009

PER HAND

Dear Sir

**POSSIBLE PROVISIONAL SUSPENSION AND WITHHOLDING OF
REMUNERATION: YOURSELF**

You are referred to the personal discussion held between you and Messrs Meijer and Louw from our office on 25 November 2009 in your office at the Clocolan Court House.

You will recall that you were advised that the Magistrates Commission resolved to charge you with misconduct, *inter alia* for not adhering to official office hours, absenting yourself from office or duty without leave or valid cause and for using intoxicants or stupefying drugs whilst on duty. You will further recall that the source, the nature and seriousness of the complaints against you were explained to you and that you elected to remain silent.

It has come to the notice of the Commission that on 30 November 2009, after *inter alia* having been personally informed of the seriousness of your alleged misconduct on 25 November 2009, you again were intoxicated whilst performing your judicial functions as presiding officer in court to such an extent that you were unable to deliver judgment shortly after lunchtime in *inter alia* the matter of **State v M Lesoro**, (Clocolan Case No 114/2009).

The Commission is of the view that reliable evidence exists indicating that the allegations against you are of such a serious nature as to make it inappropriate for

you to perform the functions of a magistrate while the allegations are being investigated.

In the light of the afore-going, the Commission contemplates to in terms of section 13(3) (a) of the Magistrates Act, 1993 (Act 90 of 1993) provisionally suspend you from duty without remuneration, pending the outcome of an investigation into your fitness to hold office.

You are therefore requested to show cause, in writing, why such a decision should not be taken. You are furthermore given the opportunity to furnish the Commission with reasons why the Commission should not determine to withhold your remuneration in terms of section 13(4A) (a) of the Act.


Your submission, if any, should reach the Commission within 7 days after receipt of this letter.

Yours faithfully

J. Meijer
SECRETARY: MAGISTRATES COMMISSION

W

Receipt acknowledged on: 21/1/2010 at 10h25
at Clocolan Magistrate's Court.

Signature: 

Name: D. Jacobs, 21/1/2010

Adrian's & Claasen Prokureurs

Prokureur / Notaris * Attorney / Notary * Babuelli
Promed-Sentrum / Centre * 73 Fontein Street / -straat 73 * Ficksburg 9730
☎ (051) 933-5661 ☎ (051) 933-5658
✉ 698 FICKSBURG 9730

Algemeen: sue.adrians@telkomsa.net
Invorderings: inv.adrians@telkomsa.net
Aklies, Sivil & Admin: law.adrians@telkomsa.net
Boekhouding: telanie.adrians@telkomsa.net

Fax to e-mail: 088 051 933 3916



Ons Verwysing: **JA MEINTJES / nadia / AL0748**
Our Reference:

U Verwysing: **6/5/5/2: 13/2009**
Your Reference:

28 Januarie 2010

PER FAKS: 012 326 0094

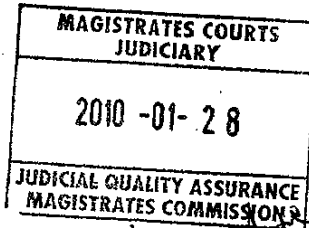
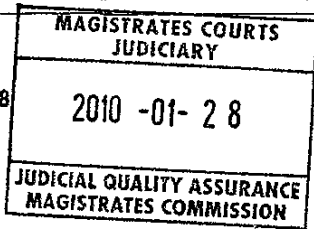
Landdroste – kommissie
**POSBUS 9096
PRETORIA
0001**

Geagte Meneer/Mevrou

IS: D JACOBS / MOONTLIKE PROVISIONALE SKORSING EN WEERHOUIING VAN VERGOEDING

Ons verwys u na bostaande aangeleentheid en heg hierby aan 'n verklaring ter opponering

Die Uwe
ADRIAN'S & CLAASEN PROKUREUR



Handwritten notes and signatures:
Dars / ...
Vew ...
...

VERKLARING TER OPPENERING VAN VOORGENOME SKORSING MET
VERLIES VAN VERGOEDING

Ek, die ondergetekende,

DAWID JACOBS
Identiteitsnommer: 630125 5021 087

verklaar onder eed as volg:

1.

Ek is 'n volwasse manlike Landdros van Clocolan, Oos Vrystaat en die feite hierin vervaar val binne my persoonlike kennis en wete en is waar.

2.

Ek bevestig hiermee dat ek 'n kennisgewing aangaande my moontlike voorlopige skorsing en weerhouding van vergoeding, gedateer 13 Januarie 2010 op 22 Januarie 2010 ontvang het.

3.

Dat ek die verklaring maak ten einde te versoek dat ek nie geskors word nie en wel vir die volgende redes, naamlik:

- dat ek nog steeds diens kan verrig, alhoewel verkieslik nie te Clocolan nie, maar eerder by 'n ander sentrum, waar ek onder toesig en beheer van 'n kantoorhoof my werksaamhede as Landdros kan voortsit; en
- dat ek nog steeds toegelaat kan word om die administratiewe take en ander regterlike werk soos geregtelike doodondersoeke en kinderhof verrigtinge kan hanteer.

4.

Dat ek verder ook die verklaring maak om te versoek dat indien dit wel die Kommissie se besluit is om my te skors, dat sodanige skorsing nie sonder vergoeding moet wees nie, aangesien my finansiële verpligtinge van so aard is, dat ek en my gesin daarvan afhanklik is.

5.

Ek is getroud met 3 kinders wie ek nog finansiële onderhou, weens hulle verbondenheid en betrokkeheid by tersiere studies, in Bloemfontein en Potchefstroom.

SUID-AFRIKAANSE POLISIEDIEN
MISDAAD VOORKOMING
CRIME PREVENTION

2010 -01- 27

RICKSBURG
STATION COMMISSIONER

N.O.N.
2010-11

6.

Ek betaal maandeliks 'n bedrag van R1 500.00 per kind en soms aanvullend deur die maand geld aan hierdie kinders oor.

7.

Daar is dan ook nog my persoonlike finansiële verpligtinge van sowat R8 000.00 wat ek maandeliks moet nakom en indien ek geen vergoeding ontvang nie sal dit in my opinie daartoe lei dat ek dieselfde nie sal kan nakom nie en wat gesien in die lig daarvan dat meeste van die verpligtinge teenoor instansies in Clocolan is, daartoe lei dat nie net my naam nie, maar ook die aansien van lede van die Departement van Justisie in twyfel getrek sal word.

8.

In my beskeie opinie verrig ek tog wel goeie werk.

9.

Ek belewe die afgelope tyd angs aanvalle, welke my klokslag veral 3 (DRIE) uur in die oggend oorval en was al vir behandeling en konsultasies met sielkundiges en ontvang huidiglik behandeling daarvoor

[Handwritten signature]
DAVID JACOBS

1) Ek, die ondergetekende, sertifiseer hiermee dat die Deponent verklaar het dat hy met die inhoud van hierdie verklaring wat voor my te Ficksburg op hierdie 27ste dag van JANUARIE 2010 geteken en beëdig is, vertrouwd is, dat hy dit begryp en dat aan die bepalings van die Regulasies vervat in Goewermentskennisgewing R1258 van 21 Julie 1972 voldoen is.

2) Ek het geen preswaar teen die voorgeskrewe eed.
3) Ek beskou die voorgeskrewe eed as bindend op my gewete.

4) So, help my God

[Handwritten signature]
KOMMISSARIS VAN EDE
N.D. NTHALI
S.A. Polisie
Mclabbe straat 80

SIJL AFRIKAANSE PRESTEDIGENS
MISDAAD VOORKOMING
CRIME PREVENTION
2010 -01- 27
FICKSBURG
STATION COMMANDER
SOUTH AFRICAN POLICE SERVICE

NTHALI DAVID NTHALI
S.A. Polisie
Mclabbe straat 80
Ficksburg
Inspekteur.



MAGISTRATES COMMISSION

LANDDROSTE KOMMISSIE

P.O BOX/POSBUS 9096, PRETORIA, 0001 • TEL : [012] 3253951 • FAX/FAKS [012] 3260094

STAFF CONFIDENTIAL

Date/Datum : 29 January 2010
Reference/Verwysing : 6/5/5/2-13/2009
To (Fax No) Aan (Faks No) : 051-4476854
To/Aan : **CHIEF MAGISTRATE: BLOEMFONTEIN**
For attention/Vir aandag : MR M D HINXA
From/Van : Mr J Meijer
Subject/Onderwerp : **POSSIBLE PROVISIONAL SUSPENSION FROM
OFFICE: MR D JACOBS, MAGISTRATE,
CLOCOLAN**

MESSAGE/BOODSKAP

Our telephonic discussion on the 28th instant and on earlier occasions in this regard refers.

Attached please find copies of our letter dated 13 January 2010 and Mr Jacobs' response thereto, submitted on his behalf by Adrian's and Claasen Attorneys dated 28 January 2010 for your attention. The contents thereof are self explanatory.

It would be appreciated if you could furnish the Commission with your recommendation in regard to the request made by Mr Jacobs as set out in paragraph 3 of his affidavit to enable me to place the matter on the agenda of the Ethics Committee's meeting to be held on 4 February 2010.

Number of pages/Aantal bladsye : 6

Kind regards

J. Meijer

SECRETARY: MAGISTRATES COMMISSION
SEKRETARIS: LANDDROSTEKOMMISSIE

RP



MAGISTRATES COURTS INDIARY
2010 -02- 01
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
LEFAPHA LA TOKA LE NTSHETSO-PELE YA MOLAOTHE
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONSKERKING
MAGISTRATES COMMISSION

J464

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
 LEFAPHA LA TOKA LE NTSHETSO-PELE YA MOLAOTHE
 DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONSKERKING

**MAGISTRATE'S OFFICE / OFISI YA MAGISTRATA / LANDDROSKANTOOR:
 BLOEMFONTEIN**

**FAKSIMILEE VERSENDINGSMEMORANDUM
 FACSIMILE TRANSMISSION COVERING MEMORANDUM**

FROM : M D HINXA	PRIVATE BAG X 20583 BLOEMFONTEIN 9300
TEL: (051) 506-1377/79	FAX: (051) 447-6854/ 086 507 8094
E-mail: nrolisisu@justice.gov.za	
REFERENCE : 2/1/5	DATE : 1 February 2010

TO: THE SECRETARY: MAGISTRATES COMMISSION

FOR ATTENTION: MR. J MEIJER

FAX NUMBER: (012) 326 0094

NUMBER OF PAGES (including this page) 2

TOPIC: POSSIBLE PROVISIONAL SUSPENSION FROM OFFICE: MR D JACOBS – MAGISTRATE, CLOCOLAN

- MESSAGE:**
1. Your 6/5/5/2 – 13/2009 dated 29/1/10 bears reference.
 2. I am unfortunately unable to accede to the request of Mr. Jacobs as encapsulated in paragraph 3. There is currently no post in the bigger centres where he can be absorbed temporarily. Placing him additional will trigger another problem at his own office ie. a vacuum which cannot be filled due to reason 3(c) below.
 3. Even if there were such post/s in bigger centres, it would be a futile exercise to consider assisting Magistrate Jacobs by transfer for the following reasons:

- a) He was temporarily placed at Ladybrand under the supervision of another magistrate (Mr. Van Zyl). He picked thereat a criminal charge of drunken driving during working hours.
 - b) Bloemfontein (which is the biggest court in the cluster) was then identified for his transfer to salvage him. He arrogantly refused.
 - c) His temporary transfer with full pay will spark a need for substitution at his office. The latter will, in turn, fuel S & T claims for the relief magistrate. Currently this province is experiencing budgetary chaos whereby, as you undoubtedly are aware, magistrates are not allowed even to phone, let alone drive.
 - d) The chances are very slim that in such a field of high specialization an ordinary supervising magistrate can rescue Magistrate Jacobs at this advanced stage, whereas even the professionals at the rehabilitation centre at that early stage could, on two occasions, not manage. Magistrate Jacobs is, in my view, beyond redemption as ALL possible options (including those far out of my way) have been tried with no positive dividends.
 - e) Attempting to, once more, help him will create (if it has not already done so) a very bad precedent for other would-be culprits.
4. I accordingly recommend that the disciplinary route be followed.



M D HINXA
CHIEF MAGISTRATE: BLOEMFONTEIN
CLUSTER HEAD: FREE STATE "A"

Please telephone immediately if you did not receive the number of pages indicated above OR if copies are illegible.