

9 Appointment of judicial officers

(1) (a) Subject to the Magistrates Act, 1993, and section 10 of this Act, the Minister may appoint for any district or sub-district a magistrate, one or more additional magistrates or one or more assistant magistrates and for every regional division a magistrate or magistrates.

[Para. (a) substituted by s. 17 of Act 90 of 1993 (wef 11 March 1994) and by s. 1 (a) of Act 19 of 2010 (wef 7 December 2010).]

(aA) The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate.

[Para. (aA) inserted by s. 11 of Act 29 of 1974 (wef 15 March 1974) and substituted by s. 1 of Act 28 of 1981 (wef 11 March 1981), by s. 3 (a) of Act 104 of 1996 (wef 14 February 1997) and by s. 3 (a) of Act 66 of 1998 (wef 7 October 1998).]

(b)

[Para. (b) substituted by s. 3 (b) of Act 66 of 1998 (wef 7 October 1998) and deleted by s. 1 (b) of Act 19 of 2010 (wef 7 December 2010).]

(c)

[Para. (c) substituted by s. 24 (1) (a) of Act 94 of 1974 (wef 1 March 1975) and deleted by s. 3 of Act 31 of 2008 (wef 9 August 2010).]

(d) A magistrate, an additional magistrate or an assistant magistrate of a district or subdistrict may at the same time also be a magistrate, an additional magistrate or an assistant magistrate of another district.

[Para. (d) added by s. 24 (1) (b) of Act 94 of 1974 (wef 1 May 1973).]

(1A)

[Sub-s. (1A) inserted by s. 8 (1) of Act 102 of 1972 (wef 2 July 1972) and deleted by s. 2 of Act 34 of 1986 (wef 1 August 1986).]

(2) (a) A person appointed as judicial officer under this section shall, before commencing with his or her functions in terms of this Act for the first time, take an oath or make an affirmation subscribed by him or her, in the form set out below:

'I,

(full name)

do hereby swear/solemnly affirm that in my capacity as a judicial officer I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.'

[Para. (a) substituted by s. 4 of Act 53 of 1970 (wef 1 December 1970) and by s. 1 of Act 62 of 2000 (wef 23 March 2001).]

(b) Any such oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district concerned or a justice of the peace who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

(3) Subject to subsections (4) and (5), the Minister, after consultation with the head of the court concerned, may appoint any appropriately qualified and fit and proper person to act-

(a) in the place of any magistrate, additional magistrate or assistant magistrate who is not available; or

(b) in any vacant office of magistrate; or

(c) as a magistrate in addition to any magistrate of a regional division or a district.

[Sub-s. (3) substituted by s. 3 (b) of Act 104 of 1996 (wef 14 February 1997), by s. 3 (c) of Act 66 of 1998 (wef 7 October 1998) and by s. 1 of Act 28 of 2003 (wef 1 November 2003).]

(4) (a) A magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may-

(i) whenever a magistrate, additional magistrate or assistant magistrate is for any reason unavailable to carry out the functions of his or her office; and

(ii) in consultation with the Minister or an officer in the Department of Justice and Constitutional Development designated by the Minister,

temporarily appoint any competent person in the place of the magistrate concerned.

(b) An appointment in terms of paragraph (a) remains valid for the duration of the unavailability of the magistrate in question, or for a period not exceeding five consecutive court days, whichever period is the shortest.

(c) Any person appointed in terms of paragraph (a) may-

(i) upon the expiry of the appointment in terms of paragraph (b); and

(ii) if the magistrate in whose place the appointment has been made, is still unavailable,

be reappointed once only in terms of paragraph (a) in the place of that magistrate.

[Sub-s. (4) substituted by s. 3 (b) of Act 104 of 1996 (wef 14 February 1997), by s. 3 (c) of Act 66 of 1998 (wef 7 October 1998) and by s. 1 of Act 28 of 2003 (wef 1 November 2003).]

(5) (a) Any person appointed in terms of subsection (3)-

(i) holds that office for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed 12 months; and

[Sub-para. (i) substituted by s. 1 (a) of Act 24 of 2015 (wef 8 January 2016).]

(ii) may be reappointed to that office in terms of subsection (3).

(b) The Minister must cause Parliament and the Magistrates Commission to be informed whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding 12 months.

[Para. (b) substituted by s. 1 (b) of Act 24 of 2015 (wef 8 January 2016).]

[Sub-s. (5) deleted by s. 2 of Act 34 of 1986 (wef 1 August 1986), added by s. 3 (c) of Act 104 of 1996 (wef 14 February 1997) and substituted by s. 1 of Act 28 of 2003 (wef 1 November 2003).]

(6) Any person appointed in terms of subsection (3) or (4) is also deemed to have been so appointed in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings-

(a) in which he or she has participated as such a magistrate, including an application for leave to appeal in respect of such proceedings; and

(b) which have not yet been disposed of at the expiry of the period for which he or she was appointed.

[Sub-s. (6) added by s. 1 of Act 28 of 2003 (wef 1 November 2003).]

(7) (a) A magistrate appointed in terms of subsection (1) who presided in criminal proceedings in which a plea was recorded in accordance with section 106 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall, notwithstanding his or her subsequent vacation of the office of magistrate at any stage, dispose of those proceedings and, for such purpose, shall continue to hold such office in respect of any period during which he or she is necessarily engaged in connection with the disposal of those proceedings-

(i) in which he or she participated, including an application for leave to appeal in respect of such proceedings; and

(ii) which were not disposed of when he or she vacated the office of magistrate.

(b) The proceedings contemplated in paragraph (a) shall be disposed of at the court where the proceedings were commenced, unless all parties to the proceedings agree unconditionally in writing to the proceedings being resumed in another court mentioned in the agreement.

(c) If the magistrate contemplated in paragraph (a) has subsequently been appointed as a Constitutional Court judge or judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001)-

(i) he or she shall only be entitled to the benefits to which such a Constitutional Court judge or judge is entitled as contemplated in the Judges' Remuneration and Conditions of Employment Act, 2001, in respect of any period taken to dispose of the proceedings as contemplated in paragraph (a); and

(ii) the period taken to dispose of the proceedings as contemplated in paragraph (a) is deemed to be active service for purposes of the Judges' Remuneration and Conditions of Employment Act, 2001.

(d) If the magistrate contemplated in paragraph (a) has subsequently not been appointed as a Constitutional Court judge or judge as contemplated in paragraph (c), he or she is entitled to such benefits as determined by the Minister from time to time by notice in the Gazette.

[Para. (d) substituted by s. 1 of Act 8 of 2017 (wef 2 August 2017).]

(e) A magistrate contemplated in paragraph (a) who is, in the opinion of the Minister-

(i) unfit to continue holding the office of magistrate for purposes of disposing of the proceedings in question; or

(ii) incapacitated and is not able to dispose of the proceedings in question due to such incapacity,

may be exempted by the Minister from the provisions of this subsection, after consultation with the Chief Justice.

[Sub-s. (7) added by s. 1 of Act 22 of 2005 (wef 2 November 2007).]

[S. 9 amended by s. 8 of Act 40 of 1952 (wef 27 June 1952), by s. 17 of Act 50 of 1956 (wef 22 June 1956), by s. 38 of Act 68 of 1957 (wef 28 June 1957), by s. 24 of Act 93 of 1962 (wef 4 July 1962), by s. 1 of Act 19 of 1963 (wef 15 March 1963) and by s. 1 of Act 48 of 1965 (wef 5 May 1965) and substituted by s. 2 of Act 8 of 1967 (wef 17 February 1967).]