



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Chief Masters Directive 4 of 2011

1. Purpose

The purpose of the directive is to ensure a uniform approach by Masters in respect of the matters listed below.

2. Motivation / Background

A number of role players have approached my Office for clarity on certain matters. As part of my statutory obligations I have decided to provide the following guidelines to ensure a uniform approach by Masters to the matters raised.

2.1 Section 28 (1) (c) of the Administration of Estates Act 66 of 1965 relates to Banking Accounts where an executor has to place funds from an estate which are not being immediately utilised into an interest bearing account with a bank.

2.2 There are two views pertaining to this practice:

a) Banks have offered executors the payment of an administrative fee for administering pooled funds. The estate is neither prejudiced by the pooling of funds nor by the by the payment of an administration fee to the executor. The funds are pooled on the initiative of the executor to draw a higher rate of interest as opposed to an individual investment attracting a poorer rate of interest. The higher rate of interest that will accrue will serve the best interests of the estate. The view that the executor has a congruent duty to disclose the fee earned and the added realised benefit of pooling funds to the client has been advanced. The act is silent on disclosure however the executor acts in a fiduciary capacity and such disclosure will accord with ethical practice. The executor's remuneration of 3.5 % on the gross value of the assets and 6 % on income after the date of death is separate from the administration fee and is still allowed.

b) **The alternate view** is that the executor is not entitled to an administration fee as the act does not cater for further fees apart from those legislated. It is mooted that any variation will lead to abuse. The executor is then only entitled to the prescribed fee. If an executor feels that he is entitled

to a greater fee he must apply to the Master to consider same. The executors' remuneration is all inclusive and no further fees are allowed subject to application to the Master. The fee as prescribed is in actual fact the administration charge.

In this regard also see *Meyerowitz on Administration of Estates*, 2010 edition, paragraph 14.6: "If any fees are recovered by the executor they must be paid into the estate (*Horn's Executor v The Master 1919 CPD 48*)"

3. The following decisions have been made:

- 3.1 The instance where the executor fail to credit the total interest earned on Section 28 (1) (c) investments plus any administrative fee paid as a result of the investments amounts to breach of the executors fiduciary duty. All income must be specified under the Income and Expenditure Account. The executor is only entitled to the prescribed fees and there is no legal or statutory basis upon which an executor can claim a portion of interest earned by the investment.
- 3.2 **All previous Master's Directives on points addressed by this Chief Master's Directive are hereby revoked.**

4. Effective date

This Directive will become effective as from the date of signature hereof.


L& Basson
Chief Master

DATE: 11/6/11