

# ETHICS



### A PRACTICAL GUIDE TO THE ETHICAL CODE OF CONDUCT FOR MEMBERS OF THE NATIONAL PROSECUTING AUTHORITY

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## THE

## ETHICAL DUTIES

OF

# PROSECUTORS



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#### FOREWORD

"This Manual will be our roadmap to victory. The prosecutor who follows this route will be a winner. Such a prosecutor will bring honour, integrity and pride to our profession, and most importantly, justice to society."

J S M Henning SC Deputy National Director of Public Prosecutions

March 2004



#### THE ESSENCE OF ETHICS

Ethics can be defined as the branch of philosophy that is concerned with human character and conduct and deals with questions of right and wrong, good and evil.

Like other human sciences, it uses a systematic, rational approach, based on a set of principles, to determine what is "good", or ethical, and what is "bad", or unethical, in human conduct.

These principles are sometimes also called values or norms.

Ethics in a legal sense refers to the general body of rules, written or unwritten, relative to the conduct of the members of the profession. It is intended to guide them in maintaining certain basic standards of behaviour.

These professional standards of conduct have evolved over the ages to form the rules of approved moral behaviour for a specific professional group.

Our vision requires prosecutors to perform their duties fearlessly and with vigour. The law and the demands of ethics, require them to act towards the accused, or their opposition, within certain limits or prescripts.

It is not easy to capture, within the confines of a written manual, all the nuances and practical problems, which a prosecutor will encounter when dealing with ethical issues. The aim of this manual is merely to provide a practical guide that will point prosecutors in the right direction.

The material in this manual is organized into six chapters dealing with ethical principles relevant to specific role players in the criminal justice system. The consequences of transgression of these principles are dealt with in the seventh chapter.

Each chapter outlines the applicable principles, followed by practical examples, relevant case law, reference to the Handy Hints and NPA Policy manuals and words of wisdom.

We hope that this manual will not simply gather dust, but will be used as a valuable tool in enhancing the ethical consciousness of prosecutors.



#### ACKNOWLEDGEMENTS

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#### DISCLAIMER

While every effort has been made to ensure that the information in this manual is correct, it remains the responsibility of each prosecutor to stay abreast of developments and to ensure that information contained herein is correctly applied.



#### **ABBREVIATIONS**

СРА	The Criminal Procedure Act 51 of 1977
DPP	The Director of Public Prosecutions
e.g	For example
etc	Etcetera
NDPP	The National Director of Public Prosecutions
NPA	The National Prosecuting Authority
Policy Manual	The National Prosecuting Authority Policy Manual
SPP	Senior Prosecutor
The Constitution	The Constitution of the Republic of South Africa, Act 108 of
	1996



#### SYMBOLS

SYMBOL	MEANING	
	"ETHOS" - OUR ETHICS WATCHDOG	
	SITUATIONS WHERE PERMISSION HAS TO BE OBTAINED FROM A DPP/DEPUTY DPP/SPP	
	REFERENCE TO THE HANDY HINTS MANUAL FOR PROSECUTORS	
	REFERENCE TO THE NPA POLICY MANUAL	
	CASE LAW	
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#### CASE LAW

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## CHAPTER 1



### SERVING

### THE

### **PUBLIC INTEREST**

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#### Serving the public interest



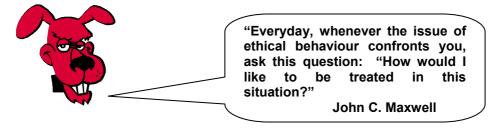
#### 1.1 Integrity

Prosecutors shall at all times exercise the highest standard of integrity and care.

Prosecutors must be and perceived to be honest, sincere and truthful.

#### 1.1.1 The decision to prosecute

- The decision of whether or not to prosecute must be taken with care, because it may have profound consequences for victims, witnesses, the accused and their families. A wrong decision also undermines the community's confidence in the prosecution system.
- Resources should not be wasted pursuing cases where there is no reasonable prospect of success, but must be used to act vigorously in those cases worthy of prosecution.
- In the institution of criminal proceedings, the prosecutor will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence.

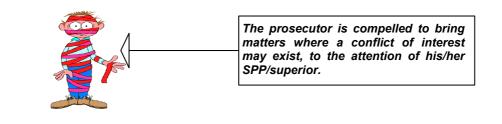


#### EXAMPLE

On a charge of robbery X implicates Y in a confession. Although this evidence is inadmissible against Y in terms of section 219 of the CPA and no other evidence exists, you decide to prosecute both, in the hope that X might testify and implicate Y. DO NOT PROSECUTE IN A CASE WHERE THE DOCKET DOES NOT CONTAIN PRIMA FACIE EVIDENCE, IN THE HOPE THAT SUFFICIENT PROOF MAY MIRACULOUSLY SURFACE DURING THE TRIAL.

#### **1.1.2 Conflict of interest**

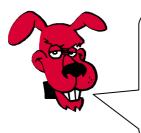
- In matters where the prosecutor has a personal interest, a conflict of interest may arise.
- Prosecutors should recuse themselves where a perception that objectivity is compromised, exists or could exist.



EXAMPLE				
Traffic offences - don't do friends any favours.	Treat every representation			
equally.				

#### 1.1.3 Duty when adducing evidence

- When presenting evidence on behalf of the state, prosecutors must do so with scrupulous fairness.
- Prosecutors should not attempt to obtain a conviction by all means at their disposal.
- Prosecutors should ensure that all relevant evidence is placed before the court.



"The prosecutor may prosecute with earnestness and vigour – indeed he shall do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

George Sutherland in Berger v United States (1935)

#### EXAMPLE

The defence is in possession of the case docket. Your witness deviates from his/her statement in a material respect. However, the defence neglects to point this out. YOU HAVE A DUTY TO DISCLOSE THIS DEVIATION TO THE COURT.

#### 1.1.4 Honesty



- The need for integrity is absolute.
- Prosecutors should be scrupulously honest in providing information.

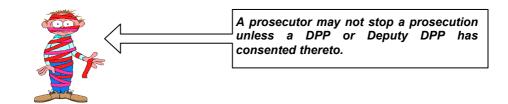
#### EXAMPLE

You inform the complainant that you have to postpone the case, as you are still awaiting the DPP's decision. In the meantime you have neglected to forward the docket and the required report. YOU MUST TAKE PERSONAL RESPONSIBILITY FOR YOUR CONDUCT.



#### 1.1.5 Stopping of prosecution

- The decision to stop a prosecution must be made with circumspection.



#### EXAMPLE

The accused in a domestic violence case has already pleaded. The complainant does not want the matter to proceed. Permission to stop the prosecution has to be obtained from the DPP. DO NOT MERELY CALL THE WITNESS. DO NOT LEAD EVIDENCE THAT SHE DOES NOT WISH TO PROCEED AND THEN CLOSE YOUR CASE. This will amount to unauthorised stopping of prosecution.







#### CASE LAW:

#### **R v De Kock** *1914 EDL 348 at 354*

"The Crown Prosecutor should have no other interest in the case than to lay before the court such facts as may assist the court in arriving at the truth. This is his sole and only duty."

#### **R v Riekert** 1954 (4) SA 254 (S.W.A.) at 261F

"The public prosecutor does not only represent the interest of the Crown, but he also has a duty towards the accused to see that an innocent person be not convicted. Thus it is his duty to disclose, in certain circumstances, facts harmful to his own case."

#### S v Takaendesa 1972 (4) SA 72 (R.,A.D.) at 74F-G

"If the prosecutor had been aware of the true facts and concealed them from the court, he would have been guilty of a gross dereliction of duty and one that could only be strongly condemned."

#### **S v Chogugudza** *1996 (1) SACR 477 (ZS) at 487h*

"Prosecutors are placed in positions of authority. It is their duty to ensure that accused persons are dealt with properly and in accordance with the law. As officers of the court, their bounden obligation is to uphold the law and by their conduct set an example of impeccable honesty and integrity. A failure to do so will lead to an erosion of confidence in the minds of the public."

#### 1.2 Impartiality



Prosecutors shall perform their duties without fear, favour or prejudice.

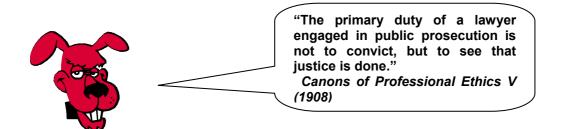
Prosecutors must strive to be and be perceived to be, consistent, independent and impartial.

#### **1.2.1** The decision to prosecute

- Prosecutors should not allow their judgement to be influenced by factors such as their personal views regarding the nature of the offence, or the race, ethnic or national origin, sex, religious beliefs, status, political views or sexual orientation of the victim, witnesses or the offender.
- Act with objectivity and pay due attention to the constitutional right to equality and fairness.
- All relevant circumstances must be taken into account. Ensure that reasonable enquiries with regard to the evidence are made, irrespective of whether these enquiries are to the advantage or disadvantage of the alleged offender.
- When making a fair decision to prosecute, the following aspects may, *inter alia,* be taken into account:
  - The nature and seriousness of the offence
  - The interest of the victim and the broader community
  - The circumstances of the offender

#### EXAMPLE

X is doing her washing in a bucket of water. Whilst hanging up the washing, her unsupervised, two year old toddler, climbs into the bucket and drowns. Prima facie she can be charged with culpable homicide. WHEN MAKING A DECISION, HUMANITARIAN CONSIDERATIONS, MIGHT, IN APPROPRIATE CASES, BE TAKEN INTO ACCOUNT.



#### 1.2.2 Conflict of interest

- Prosecutors should carry out their functions impartially and not become personally, as opposed to professionally, involved in any matter.
- Prosecutors should avoid taking decisions in matters where a conflict of interest exists, or might be perceived to exist.

#### EXAMPLE

You are the only prosecutor in a one horse town. Your brother is arrested on a charge of rape. AVOID ANY PROFESSIONAL INVOLVEMENT IN THIS MATTER. Refer it to your nearest SPP for decision and guidance.

#### 1.2.3 External pressures

- Prosecutors should remain unaffected by political or media pressures and shall have regard only to the interest of justice.

#### EXAMPLE

A well-known politician is arrested on a charge of corruption. There is an outcry in the media that he should be prosecuted, however, there is insufficient evidence to do so. DO NOT BE SWAYED BY EXTERNAL PRESSURES.

#### 1.2.4 Playing "Sherlock Holmes" - investigating the crime



- Where authorised to participate in the investigation of crime, or when exercising authority over the police or other investigators, prosecutors should do so objectively, impartially and professionally.
- Insist that the investigating agencies comply with the law and fundamental human rights.
- Avoid being over actively involved in the investigation of a case.
- A prosecutor should never put him/herself in a position where he/she could eventually become a witness in his/her own case.
- Where the participation of the prosecutor in the investigation process is unavoidable, the prosecutor should not prosecute the case.
- Prosecutors have to testify where there is a duty to do so.

#### EXAMPLE

You are present when a suspect in a murder case points out the murder weapon. At the ensuing trial the accused claims that this pointing out is inadmissible, as his constitutional rights were not explained. You were there when these rights were explained to him and you are therefore a crucial witness in this respect. You will not only have to recuse yourself from prosecuting this matter, but will also have to testify and be subjected to a credibility finding by the court. AVOID BECOMING A WITNESS IN YOUR OWN CASE.

#### 1.2.5 Representations

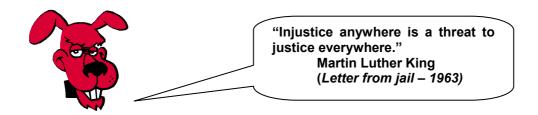
- The right of the public to approach the NPA is a vital element of access to justice. Therefore representations warrant prompt and undivided attention.
- Professional conducts towards representors, will, whatever the ultimate decision, promote confidence in the impartiality of and accessibility to the NPA.
- Where an accused person tenders a version of events, which contradicts those of state witnesses, the witnesses should, in appropriate circumstances, be given an opportunity to respond to these allegations.
- Where confronted with inherently opposing versions, prosecutors should refrain from making a "credibility finding" based on written statements and should rather refer the matter for trial.

#### EXAMPLE

X has received a R500 fine for disobeying a stop sign. In his representation he alleges that the sign is not visible as it is obstructed by a tree. DO NOT MERELY ACCEPT THIS AS THE TRUTH. The traffic officer must be given the opportunity to respond to this version before you make your decision.

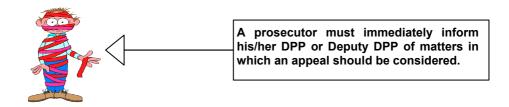
#### 1.2.6 In court

- Prosecutors should not regard themselves as appearing for a party but rather as acting in the interests of justice.
- In the institution of criminal proceedings, the prosecutor will proceed only when there are reasonable prospects of success.
- Prosecutors should lay all the facts which comprise the case for the prosecution before the court.
- Prosecutors should assist the court in arriving at a just verdict.

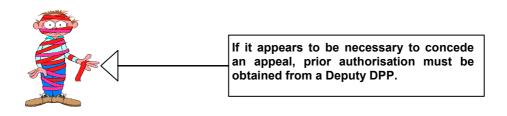


#### 1.2.7 Appeals and reviews

- The NPA has a duty, as the representative of the community, to take appropriate action where an injustice has occurred.



- Notwithstanding the adversarial nature of the legal system, state advocates must strive to be objective.
- State advocates should, if necessary, allude to material shortcomings, or irregularities not taken up in the grounds of appeal or appellants' heads of argument or by the Judge/s.



- Generally the state's approach on appeal is to support the decision of the magistrate.



#### EXAMPLE

Appellant has omitted to file heads of argument and you know that the Appellate Judges would not have read the record and will merely strike the matter from the roll. However, when you perused the record you realized that the conviction and sentence should be set aside. Your Deputy DPP agrees. IT IS YOUR DUTY TO BRING THIS TO THE ATTENTION OF THE APPELLATE JUDGES IN ORDER FOR JUSTICE TO BE DONE.

- Objectivity is equally important in the case of review proceedings.
  Remember that the test is whether or not the proceedings are essentially in accordance with justice.
- When providing the reviewing Judge with an opinion, state advocates should allude to material shortcomings or irregularities even where the Judge omitted to do so.

#### EXAMPLE

A Judge requests your opinion with regard to sentence in a particular review case. You realise that there is a defect in the charge sheet which would result in the conviction being overturned. IT IS YOUR DUTY TO BRING THIS TO THE REVIEWING JUDGE'S ATTENTION.



#### 1.2.8 Perceptions of bias

AVOID THE FOLLOWING SITUATIONS AND CONDUCT WHICH, IN THE EYES OF THE PUBLIC, MIGHT CREATE A PERCEPTION OF BIAS:

- Avoid travelling with the magistrate to your respective courts
- Avoid any private conversation with the presiding officer while a case is pending
- Avoid prosecuting in a matter where you are related to, either the accused, the witness, the presiding officer, or the legal representative of the accused
- Avoid fraternising with the defence counsel, inside and outside the courtroom, whilst a case is pending
- Avoid private conversations with an accused should you need information from the accused, ascertain this from the investigating officer, where possible or *via* the presiding officer whilst the court is in session
- Avoid seeking or receiving gifts, donations, favours or sponsorships that may compromise, or may be perceived to compromise, your impartiality
- Avoid public participation in political activities
- Maintain a professional relationship with members of the police with mutual respect for the distinct functions and operational independence of each profession
- Exercise discretion when socialising in public with any of the different role players





#### CASE LAW:

#### S v Majavu 1994 (2) SACR 265 (CK) at 275h-j to 276a

"In Boucher v The Queen (1955) 110 CCC 263 Rand J states the following at 270: 'It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof and facts is (sic) presented: It should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than (sic) which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of dignity, a seriousness and justness of judicial proceedings.' "

#### 1.3 Diligence and professionalism



Prosecutors shall perform their duties vigorously and in accordance with the highest standards of the legal profession.

Prosecutors should perform their duties consistently and expeditiously.

#### 1.3.1 Knowledge and skills

- Prosecutors should strive to be well-informed and should keep abreast of relevant legal developments.
- Reasonable steps must be taken to maintain and enhance the knowledge, skills and professional qualities of the Prosecutor.

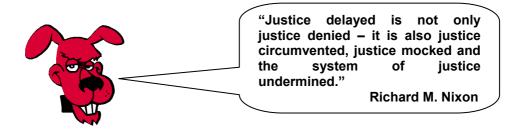


#### **1.3.2** Preparation and planning

- Court rolls must be properly planned and cases prioritised.
- Preparation for trial should be thorough and methodical this includes ensuring that the investigation is complete, knowing the contents of your docket, proper consultation with witnesses, preparation of exhibits, compiling the charge sheet or indictment etc.

#### 1.3.3 Time management

- Prosecutors must see to the timeous preparation and planning of all hearings and avoid unreasonable delays.

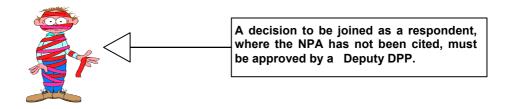


- Prosecutors should ensure the maximum utilization of court time.
- Punctuality is of the utmost importance to prosecutors.

- Delays in putting suspended sentences into operation negatively affect the credibility of the criminal justice system.
- Prosecutors must ensure that applications for suspended sentences be put into operation and are placed on the roll as soon as possible.
- Review opinions, where the accused is still in custody, must receive priority attention.

#### 1.3.4 Defending the interest of justice

- During both the trial and sentencing phases the case should be advanced purposefully.
- If the NPA is not cited as a respondent in review applications, steps must be taken to file an application for joinder where a clear interest in the matter exists.





#### CASE LAW:

**Carmichele v Minister of Safety and Security and Others** 2002 (1) SACR 79 (CC) at 82h-i

"...prosecutors had always owed a duty to carry out their public functions independently and in the interest of the public."

#### 1.3.5 Being an "ambassador"



- When dealing with extraditions, prosecutors should always act with the utmost professionalism and conscientiousness, as international relations are at stake.
- Prosecutors should strive to create a culture of commitment to and pride in their profession.

#### 1.4 Transparency

The exercise of prosecutorial discretion is a grave and serious responsibility and should be exercised as openly and transparently as possible and with due consideration to the spirit of the Constitution.

 If requested by interested parties, prosecutors should supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or accused might be prejudiced, or where it might not be in the public interest to do so.

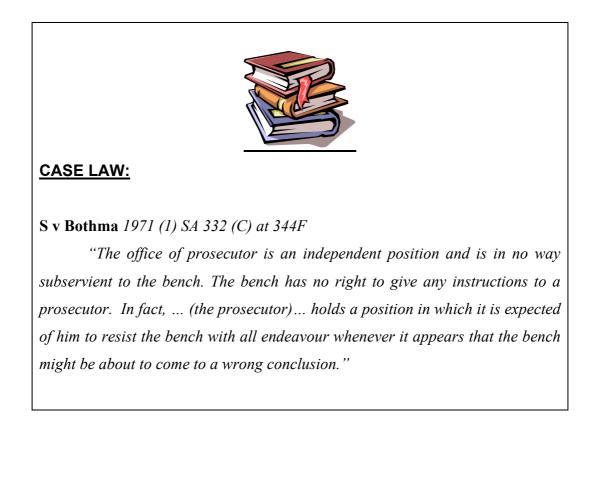


- Transparency with regard to the access to the case docket is discussed in par. 3.3.2 *infra.* 



#### 1.5 Independence

The prosecutorial discretion should be exercised independently in accordance with the directives of the NPA Policy Manual and free from undue political and judicial interference.



# 

## **CHAPTER 2**



## DUTIES

### ΤΟ

## THE COURT

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#### Duties to the court



#### 2.1 Personal responsibility for conduct

Prosecutors should at all times maintain the honour and dignity of their profession.

- A prosecutor is personally responsible and accountable for the presentation of his/her case in court.
- Prosecutors must accept this responsibility by acknowledging any shortcomings.
- A prosecutor should never attempt to shift the blame.
- Prosecutors must exercise personal judgment on the substance and purpose of statements made and questions asked when conducting their case in court.

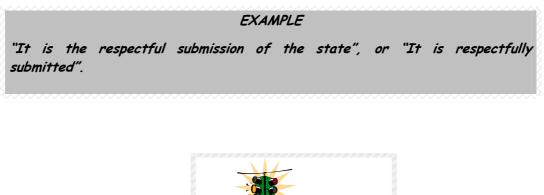
#### EXAMPLE

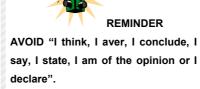
The previous prosecutor compiled the annexure to the charge sheet. The court now confronts you, being the current prosecutor, with a defect in the charge sheet. Do not pass the buck! YOU ARE PERSONALLY RESPONSIBLE FOR EVERY CASE WITH WHICH YOU DEAL.



#### 2.2 Personal opinion

- Prosecutors should always speak in their capacity as representatives of the state and not in their personal capacity.
- Prosecutors should not volunteer a personal opinion on the facts or the law, unless expressly invited to do so by the court.





#### 2.3 Obligation of honesty and directness

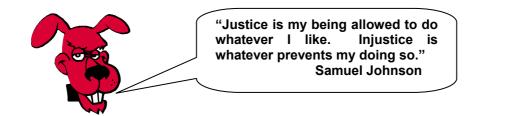


#### 2.3.1 All the facts!

- Prosecutors should place all relevant facts before the court.
- Prosecutors should not attempt to obtain a conviction at all cost.
- Prosecutors must never suppress evidence.
- Prosecutors must never mislead the court.
- Prosecutors should assist the court in arriving at a just verdict.

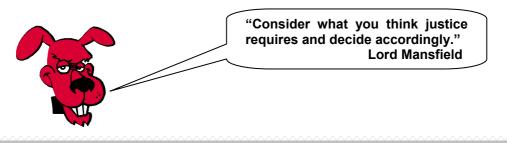
#### EXAMPLE

During a trial-within-a-trial the accused alleges that he was assaulted by the police to make a confession. The confession is subsequently admitted as evidence. Just before judgment you receive proof that the accused had in fact been forced to make this statement. IT IS YOUR DUTY TO DIVULGE THIS EVIDENCE TO THE COURT EVEN IF IT MAY BE FATAL TO THE STATE'S CASE.



#### 2.3.2 Matters of law

- The prosecutor has a duty to assist the court with all matters of law applicable to the case.
- Do not make misleading references to case law or legislative provisions. The court must be made aware of the whole picture.
- If incorrect references are made in court, it is the duty of the prosecutor to draw the court's attention to these, even if it assists the case of the opponent.
- Where a prosecutor is aware of the existence of a case that would influence the finding of the court, even if it is favourable to the accused, it is his/her duty to place it on record, should the defence neglect to do so.



EXAMPLE

Your opponent deliberately misleads the court by selectively quoting from cases without giving the true ratio of the judgments. ASSIST THE COURT BY DRAWING THE COURT'S ATTENTION TO THIS.



#### CASE LAW:

Nontenla v Director of Public Prosecutions, Umtata, and Another 2003 (2) SACR 205 (TkD) at 210c

"If there is authority that the practitioner is aware of which is relevant to the determination of the dispute before the court, such practitioner is duty bound to draw the court's attention thereto irrespective of whether such authority is in his or her client's favour or not."

#### 2.4 Courtesy and respect

Prosecutors shall at all times be courteous to the court.

Prosecutors should never undermine the dignity and reputation of the court.

#### 2.4.1 Outside the courtroom

- Introduce yourself to the presiding officer when appearing before him/her for the first time. Where possible, be accompanied by your opponent.

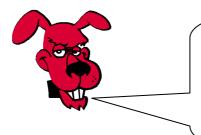


- Inform the court timeously of any delay.
- Do not publicly criticize decisions of the court. Other remedies exist.

#### 2.4.2 Inside the courtroom

HOW TO ADDRESS THE PRESIDING OFFICER IN COURT	
MAGISTRATE'S COURT	HIGH COURT
Your Worship	My Lord / My Lady Your Lordship / Your Ladyship
SUPREME COURT OF APPEAL	CONSTITUTIONAL COURT
My Lord / My Lady	Justice "Surname"
Your Lordship / Your Ladyship	Chief Justice "Surname" Deputy Chief Justice "Surname"

- As a gesture of courtesy, it is expected of the prosecutor to bow when the presiding officer enters or leaves the courtroom.
- Prosecutors should wait for the presiding officer to be seated before taking their own seats.
- Prosecutors not actively involved in the proceedings should bow when entering or leaving a court in session.
- Do not leave the podium whilst the court is in session save with leave of the presiding officer.
- Ask the court for permission to be excused in the event of a colleague taking over the prosecution.
- A prosecutor should always face the bench whilst prosecuting.
- The following unacceptable behaviour should be avoided at all cost: arrogance, audacity, insensitivity towards the language, culture and religious beliefs of others, rudeness, racism, sarcasm and any conduct that may violate the decorum of the court.

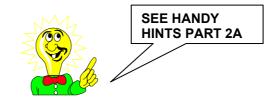


"Courtrooms contain every symbol of authority that a set designer could imagine. Everyone stands up when you come in. You wear a costume identifying you as, if not quite divine, someone special." Judge Irving R. Kaufman

- A prosecutor should stand when he/she:
  - puts the charge
  - is addressed by the court
  - ♦ addresses the court
  - is presenting evidence
  - ♦ cross-examines
  - re-examines
  - raises an objection
  - ♦ submits arguments
  - and remain standing when the court interrupts him/her in order to ask clarifying questions to a state witness
- A prosecutor takes his/her seat in court whilst:
  - the accused pleads to a charge
  - the defence/accused is addressed by the court
  - the defence presents evidence
  - the defence/accused is cross-examining a witness
  - the defence/accused raises an objection
  - the defence addresses the court
- The court should be addressed in the appropriate and respectful manner.

#### WHEN ADDRESSING THE COURT:

DO'S	DON'T'S
✓ "As the court pleases"	x "Ok, your worship"
	x "Alright"
	x " I'm finished, my lord"
✓ "If the court will bear with	x "Just hold on a second"
me"	x "Wait a minute"
<ul><li>✓ "With respect"</li></ul>	x "You are wrong"
✓ "I'm indebted to the court"	x "Thank you"
✓ "I withdraw the question"	x "Scrap that"
	x "I'm not going to ask that
	anymore"
✓ "My learned friend"	x "My alleged learned friend"





#### **INAPPROPRIATE BEHAVIOUR IN COURT**



DO NOT eat, drink or chew gum



DO NOT smoke



DO NOT fall asleep



DO NOT forget to switch off your cellular phone



DO NOT robe and disrobe in court

**DRESS** appropriately



**DO NOT** gesticulate wildly, slouch, put your foot on your chair, hang over the podium, pull faces, have conversations, make disturbing sounds, address the court whilst your hands are in your pockets, openly demonstrate dissatisfaction, e.g. by throwing objects, or display any other inappropriate behaviour

#### 2.5 Discussions in chambers



- Avoid having discussions in chambers.
- Do not discuss pending cases with the presiding officer in the absence of, or without the consent or knowledge of, the defence.
- Should the merits of the case be discussed in chambers, this has to be placed on record as soon as the case continues.
- The behaviour of the prosecutor in chambers, should be as professional as his/her behaviour in court.
- Never make derogatory comments, gossip or divulge inadmissible evidence whilst in chambers.
- No docket should be taken into the presiding officer's chambers, as it may create an unfavourable impression.

#### EXAMPLE

You tell the magistrate in chambers that the first matter to be heard is that of X on a charge of public indecency. You laughingly comment that you can't believe that he has been caught again and that his two previous convictions should have taught him a lesson. TAKE CARE NOT TO DIVULGE ANY INFORMATION REGARDING PENDING MATTERS TO YOUR MAGISTRATE OUTSIDE THE COURTROOM.



"A judge is unjust who hears but one side of a case, even though he decide (*sic*) justly." Seneca (*4 BC- AD65*)



#### CASE LAW:

**S v Roberts** 1999 (2) SACR 243 (SCA) at 249c-d

"That justice publicly be seen to be done necessitates, as an elementary requirement to avoid the appearance that justice is being administered in secret, that the presiding judicial officer should have no communication whatever with either party except in the presence of the other."

#### 2.6 Duty regarding sentencing

- Prosecutors should play an active role in the pre-sentence proceedings. SEE NPA MANUAL PART 31 SEE HANDY HINTS PART 8
  - The prosecutor has a duty to assist the court in imposing a just sentence.
  - A prosecutor must place all the relevant aggravating factors pertaining to sentencing before the court.

- Where a prosecutor is aware of the existence of mitigating factors, it is his/her duty to place it on record, should the defence neglect to do so.
- Whenever it appears that the court is under a misapprehension about its sentencing powers, prosecutors should respectfully bring the correct position to the attention of the court.

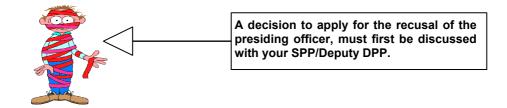
#### EXAMPLE

Your presiding officer, under the misapprehension that he does not have punitive jurisdiction to impose a fine in excess of R60 000 in a "drunken driving" case for a third offender, wants to transfer the matter to the Regional Court for sentence. IT IS YOUR DUTY TO REFER HIM TO THE "ADJUSTMENT OF FINES ACT 101 OF 1991" IN TERMS OF WHICH HE MAY IMPOSE A FINE OF R120 000 IN CASES OF THIS NATURE.

#### 2.7 Application for recusal of the judicial officer

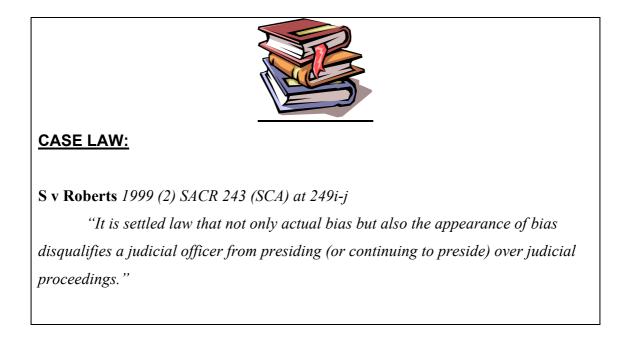
- Use the utmost tact when requesting the recusal of a magistrate or a judge.
- Prosecutors must always remain objective.
- Prosecutors should not act prematurely when deciding to apply for recusal.
- An application of this nature must be well thought through. It must be the only reasonable practical step to take.
- Submissions must be based on facts.
- Moderate language must be used.
- It is advisable and a matter of professional courtesy to inform the bench about the pending application beforehand, in order to give the judicial officer an opportunity to withdraw from the case on his/her own initiative.
- The repetition of expressions of deep respect will not make the submissions more convincing if the effect of the words is to undermine the honour and dignity of the court.

- Prosecutors should never use their position to undermine the dignity and reputation of the court, e.g. an application for recusal should never be used to cloak a wilful insult to the court.



#### EXAMPLE

You are busy leading the evidence of a complainant in a rape case. Your presiding officer interrupts you and starts cross-examining her and snidely remarks that he/she is fed up with all these prostitutes crying rape when they haven't been paid for their services. IT IS YOUR DUTY TO PROTECT THE WITNESS BY APPLYING FOR THE RECUSAL OF THE PRESIDING OFFICER ON THE GROUNDS OF HIS/HER OBVIOUS BIAS.



# 

## **CHAPTER 3**



### RESPONSIBILITIES

### ΤΟ

## THE UNREPRESENTED

### ACCUSED

# 

#### **Responsibilities to the unrepresented accused**

#### 3.1 Interacting with the accused

- Avoid private conversations with an accused.
- Should you need information from the accused, ascertain this from the investigating officer or via the presiding officer whilst the court is in session.
- Never attempt to convince an accused to plead guilty or to make admissions.
- Abstain from giving any legal advice to the accused.
- Never make any promises to the accused.
- Never "plea-bargain" with an unrepresented accused.
- Refrain from assisting an unrepresented accused in compiling a written statement setting out the facts which he/she admits.
- Do not recommend a specific counsel to an accused.

#### EXAMPLE

NEVER PERSUADE AN ACCUSED TO PLEAD GUILTY OR TO MAKE ADMISSIONS as the following scenario may present itself: You persuade the accused to plead guilty on a charge of housebreaking with the intent to steal and theft. Whilst the court is attempting to determine whether all the elements of the crime are admitted, the accused tells the court that you told him that he should plead guilty.

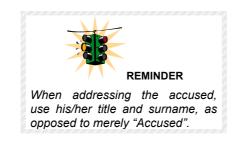
#### 3.2 Courtesy and civility

Every person has a right to have their dignity respected and protected – so does the accused.

- The prosecutor should conduct him/herself professionally towards the accused.
- It is unacceptable and an affront to the dignity of accused to secure their appearance in court in handcuffs or leg irons.



- Prosecutors should refrain from harassing, bullying, or badgering the accused.
- Do not make unjustified attacks on the character of the accused, or his/her witnesses during cross-examination.



#### 3.3 Fairness

The constitutional rights of an accused must be safeguarded. When presenting evidence on behalf of the state, prosecutors must do so objectively and with scrupulous fairness.



"There's harmony and inner peace to be found in following a moral compass that points in the same direction regardless of fashion or trend." Ted Koppel



#### CASE LAW:

#### North Western Dense Concrete CC and Another v DPP Western Cape

1999 (2) SACR 669 (C) at 682h

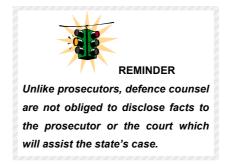
"The system of justice requires that the prosecutor be scrupulously fair in his or her dealings with accused persons. Moreover, in terms of the provisions of the Constitution, not only is every person entitled to administrative action which is fair and reasonable, but all organs of State and State functionaries are enjoined to respect the rights bestowed on all inhabitants of the Republic by the Bill of Rights."

#### 3.3.1 Evidence favouring the accused

- Disclose all evidentiary information which is beneficial to the accused, to him/her, the defence counsel, or the court.

#### EXAMPLE

You are aware of the fact that a state witness possesses evidence which is favourable to an undefended accused. You don't intend calling this witness. BRING THIS FACT TO THE ATTENTION OF THE COURT SO THAT THE COURT CAN CALL THIS WITNESS OR GIVE THE ACCUSED THE OPPORTUNITY TO DO SO.





#### CASE LAW:

**S v Van Rensburg** *1963 (2) SA 343 (N) at 343F* 

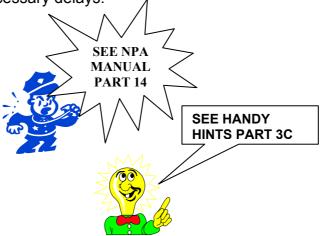
"...it cannot be too strongly emphasised that it is part of the duty of a prosecutor to bring to the notice of the court information in his possession which may be favourable to the accused."

#### 3.3.2 Access to the case docket

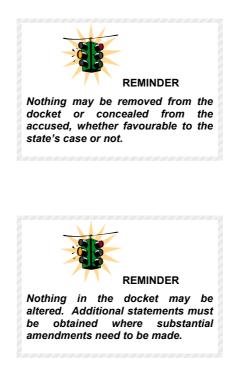


- The State has no blanket docket privilege over all the documents in the police docket.
- The right of the accused to access to the docket is generally limited to the "A" section, which contains the evidential material, and not the "B" (correspondence) and "C" (investigation diary) sections.
- Access to the "B" and "C" sections if refused by the state can only be obtained by means of a formal court application.
- In general, the accused has no right of access to the docket for purposes of bail applications.
- A defence application for a copy of the docket should be considered only after the investigation has essentially been completed, unless circumstances dictate differently.

Once a proper application for the docket has been made, the relevant information must be provided as soon as possible. This will prevent unnecessary delays.



- Prosecutors must bear in mind that the police docket remains a confidential document and that while copies of documentation in the docket are being made, the prosecutor remains in charge of its custody.
- Do not hand the docket to the accused or a legal representative for perusal and/or copying.



#### 3.3.3 Speedy trial



- Prosecutors are under a constitutional obligation to ensure that an accused is tried without unreasonable delay.
- Preference must be given to cases where the accused is in custody.
- Postponements must only be requested where justified.
- Postponements at the request of the defence should not be agreed to as a matter of course, or to accommodate counsel.
- Expeditious disposal of the case is of paramount importance. In cases of doubt, the prosecution should insist on an application being made to the court, rather than agreeing beforehand to consent to any postponement.
- Bail applications and bail appeals, must be dealt with as a matter of urgency as the liberty of the accused is at stake.
- Review opinions must be afforded priority and dealt with as urgent, particularly where the accused is still in custody.



#### CASE LAW:

Wild and Another v Hoffert NO and Others 1998 (2) SACR 1 (CC) at 14g

"Prosecutors should know that remands should not be applied for merely because the investigating officer so requests. An application to court which involves possible impairment of a fundamental right should not be made lightly and prosecutors, officers of the court, should exercise independent professional judgment before making such applications."

#### 3.3.4 More than one count?

- Additional or alternative charges should only be put where justified by the evidence.
- Prosecutors should not formulate more charges than are necessary, just to encourage an accused to plead guilty to some.
- A more serious charge should not be pursued as part of a strategy to obtain a guilty plea on a less serious one.

#### 3.3.5 Unconstitutionally obtained evidence

- Should the prosecutor elect to lead evidence that has been obtained in violation of a constitutional right of the unrepresented accused, the prosecutor should *mero motu* lead evidence in justification, as if there had been an objection to the admissibility of this evidence.





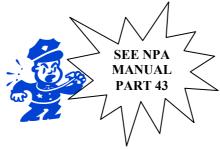


Evidence obtained in violation of a constitutional right is not automatically inadmissible. It should only be excluded if the inclusion of such evidence would render the trial unfair or would otherwise be detrimental to the administration of justice.

#### 3.3.6 Traps and undercover operations



- It is important that the use of traps and undercover operations be fair and proper.
- It is advisable that other techniques of detection, investigation, or uncovering of the commission of offences, first be exhausted before a trap is resorted to.



#### 3.3.7 Restorative justice

- In certain appropriate circumstances fairness dictates that alternative measures in lieu of prosecution in the form of restorative justice may be considered.

#### EXAMPLE

The accused, a 16 year old boy, is charged with stealing a radio. He admits the commission of the offence. CONSIDER SENDING HIM ON A DIVERSION PROGRAMME INSTEAD OF PROCEEDING WITH THE PROSECUTION.

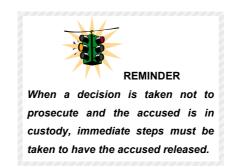


#### 3.3.8 Bail

- Bail applications and bail appeals must be dealt with as a matter of urgency as the liberty of the accused is at stake.
- Bail should only be opposed in appropriate circumstances.
- The prosecutor should not oppose the release of an accused from custody if the interest of justice so permits.

#### EXAMPLE

The accused is arrested for "shoplifting". At his/her first appearance in court he/she applies for bail. Although the investigation has not been completed, it is not prudent to postpone the bail application if you have sufficient information to decide whether or not to oppose bail.



#### 3.3.9 Appeals

- Unrepresented appellants are in the same position as represented ones insofar as the requirements for compliance with the rules of court are concerned.
- Where the appellant conducts his/her appeal in person, it is inappropriate for state advocates to take technical points.

SEE NPA MANUAL PART 40 C to F



## **CHAPTER 4**



**DUTIES** 

## ΤΟ

## **OPPONENTS**

# 

#### **Opponents**



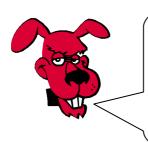
4.1 Courtesy and civility

Opponents are entitled to courtesy and respect on the same basis as the court.

#### 4.1.1 Personality clashes



- Avoid personal conflicts between the prosecutor and defence counsel.
- Personal conflicts between the prosecutor and counsel for the defence must not, in any way, influence the professional and objective way in which the trial has to be conducted.



Our prosecutors should be fair, but feared opponents, known for their dynamic approach and their enthusiasm. They must inspire the public by their passion and dedication; should not shrink from opportunism if the defence is lacking, but should never be deservedly accused of being unethical.

Anonymous

- Do not deliberately inconvenience, harass or embarrass opponents in court.
- > Do not make negative personal comments about opponents.
- Avoid sarcasm, arrogance and racist behaviour that may compromise the standard of professional courtesy.



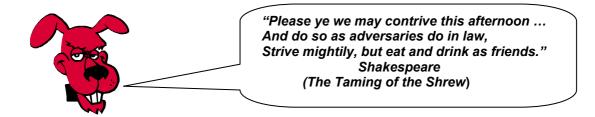
Your opponent is addressing the court. You think his argument is ridiculous and you show your ridicule by pulling faces at him and yawning. NEVER EMBARRASS OPPONENTS IN THIS WAY - KEEP YOUR FEELINGS TO YOURSELF.

EXAMPLE

#### 4.2 Fraternising with opponents



- A good inter-personal working relationship between the prosecutor and the defence counsel is commendable.



- Interaction with opponents in and around the courtroom should be approached with circumspection and caution.
- The interaction between the prosecutor and defence counsel must not create a perception of bias in the eyes of the victim, the public and the accused.

#### EXAMPLE

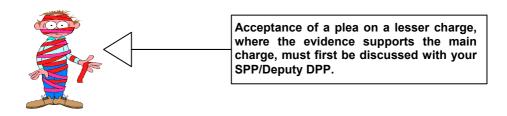
A complainant in an assault case witnesses the prosecutor and the attorney flirting and joking with each other during a court adjournment. Later on, the accused is deservedly acquitted. WAS JUSTICE PERCEIVED TO BE DONE?

#### 4.3 Making "deals" with opponents



#### 4.3.1 Plea agreements

- Refrain from making "deals" with the defence outside the scope of section 105A of the CPA.
- Prosecutors should not enter into an agreement with the defence to accept a plea on a lesser charge, where the facts upon which the plea is tendered do not substantially conform to those in the police docket.



- Where possible, the views of the complainant and the police, as well as the interest of justice, have to be taken into account during plea agreements.

#### EXAMPLE

You have a very strong case against the accused on a murder charge. The defence offers to plead guilty on a charge of culpable homicide. DO NOT ACCEPT THIS "DEAL" MERELY BECAUSE IT IS THE EASY WAY OUT.



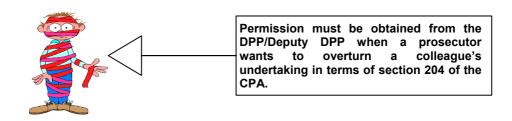
Sailing close to the wind is an exhilarating challenge. Capsizing the boat spells disaster. Prosecutors are expected to show punch and legal acuity as well as a healthy fighting spirit, but should do so within the limits allowed by simple good manners, decency and finesse. Anonymous

#### 4.3.2 Agreeing on bail

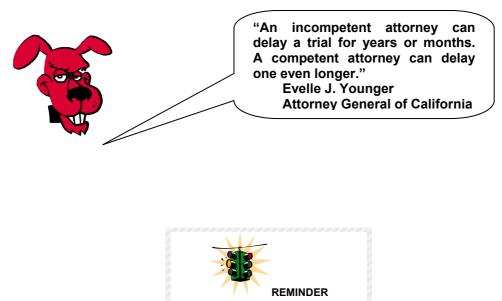
- The final decision whether or not to grant bail, is in the discretion of the court. (Remember the exception referred to in section 59A of the CPA)
- Avoid making any deals and concessions regarding bail.

#### 4.3.3 The rules of the game

- No undertaking given by a prosecutor to a party in criminal proceedings in terms of section 204 of the CPA may be overturned by another prosecutor without authorisation to do so by the DPP.



- Prosecutors are not bound by agreements between complainants, witnesses or members of the police on the one hand and the defence on the other hand.
- Any agreement regarding "admissions" either by the state or by the defence, in terms of section 220 of the CPA, must be drafted in clear and unambiguous terms, as both parties will be bound by this agreement.
- Agreements with defence counsel, with regard to postponements or standing down of matters, should not be entered into without the consent of the presiding officer.



Formal plea-bargaining with legal representatives is regulated by section 105A of the CPA.

#### EXAMPLE

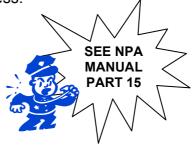
The complainant in an attempted murder case approaches you to withdraw the charge, as the accused has already compensated him. You are not bound by this agreement. Due to the seriousness of the crime you should proceed with the prosecution.

#### 4.4 Consultation with state witnesses by the defence

It is the duty of the prosecutor to protect a state witness at all times.

- Constitutional provisions have been interpreted to permit the defence, as part of the right to a fair trial, to consult with a state witness under certain conditions after having given notice to the prosecution.
- A witness has the right to refuse to consult with the defence/accused and should be informed of such right by the prosecutor.
- In deciding whether to allow the defence to consult with the state witness, the prosecutor should take into consideration the motivation for the request, the possibility of harm, prejudice or intimidation of the witness and the possibility that the witness may disclose aspects of the case prejudicial to the administration of justice.
- Permission to consult with state witnesses, other than expert witnesses, should only be granted in exceptional circumstances.
- The prosecutor must inform the accused or his/her legal representative timeously of his/her decision.
- The defence/accused is not permitted to approach the witness directly.
- The court should be approached directly for an order granting permission to consult with the witness, in the event of the prosecutor refusing to give such permission. This application should be opposed vigorously by the prosecutor.
- The prosecutor must lead the necessary evidence to enable the trial court to make an informed decision. Subject to suitable safeguards, the court may permit such a consultation if it is in the interest of justice.
- The prosecutor may oppose an application for consultation, irrespective of the witness's agreement thereto.

- Where such consent is granted, the prosecutor shall be entitled to be present at such consultation and to record what transpires during the consultation.
- It is the duty of the prosecutor to protect the witness at all times during the consultation process.



#### 4.5 Professional confidentiality

- Discussions between prosecutors and the defence that are specifically agreed upon as being "off the record" should be regarded as confidential.



- Confidentiality regarding representations by an opponent must at all times be maintained. It must be treated as having been made "without prejudice", unless the representor subsequently acts fraudulently or in bad faith.

#### EXAMPLE

During a tea-break your opponent mentions to you "OFF THE RECORD" that, despite pleading not guilty, his client had in fact confessed his guilt to him. IT WOULD BE HIGHLY UNETHICAL AND INADMISSIBLE TO USE THIS INFORMATION WHEN CROSS-EXAMINING THE ACCUSED.

#### 4.6 Misconduct by the defence counsel



 A prosecutor who has reasonable grounds for believing that any advocate, attorney, legal advisor, member of the Legal Aid Board, public defender etc. has committed a criminal offence, or has made him/herself guilty of professional misconduct, has a duty to report this to his/her superior, who should consider reporting it to the relevant professional body.

#### EXAMPLE

A defence counsel is so intoxicated in court that he/she is not able to conduct his/her clients' case adequately. BEHAVIOUR OF THIS NATURE MUST BE REPORTED TO THE APPROPRIATE BODIES, E.G. LAW SOCIETY, BAR COUNCIL etc.



## **CHAPTER 5**



**DUTIES** 

### ΤΟ

### STATE WITNESSES

# 

### **State witnesses**



### 5.1 Courtesy and respect

A witness is not a statistic, but a real person with emotions and feelings and should at all times be treated with courtesy, respect and care.

- A prosecutor must introduce him/herself to witnesses and explain the reason for their attendance.
- Prosecutors must strive to ensure that witnesses are inconvenienced as little as possible.
- Anticipated delays should be communicated to witnesses.
- Prosecutors should ensure that victims are not subjected to secondary victimization.
- Witnesses should, where possible, be informed of the trial process, the role of the various court officials, reasons for postponements, or withdrawals and findings of the court.



### 5.2 Consultation with witnesses

Prosecutors should strive to consult with a witness before the witness testifies.

### 5.2.1 Consultation between the prosecutor and the witness



- Prosecutors have a duty, where possible, to consult with their witnesses before they testify.
- Do not coach/school witnesses, but simply prepare them for testifying.
- During consultation, witnesses must be given the opportunity to refresh their memories regarding the contents of their statements.
- Do not hand the entire docket to the witness.
- Explain to the witness the procedure concerning evidence-in-chief, cross-examination and re-examination.
- Inform the witness on how to correctly address the court.
- Consult separately with each witness.
- Do not allow a witness to peruse the statements of other witnesses.
- Use an interpreter in appropriate circumstances and where necessary explain his/her role to the witness.
- The prosecutor must strive to put the witness at ease.
- The prosecutor should familiarise the witness with the court environment and procedures.



### HOW TO PREPARE A WITNESS FOR CROSS-EXAMINATION

It is permissible to prepare a witness for cross-examination in the following way:

- > "Listen to the question before you answer."
- > "If you do not understand it, say so."
- "If you don't know the answer to a question, don't guess; just say that you don't know."
- "Don't worry about what the defence has in mind when they ask a question, just give a direct answer."
- > "Answer as briefly as possible and don't make speeches."
- > "Answer questions and don't argue with the defence."
- > "Don't be sarcastic, angry or lose your temper."
- > "Don't reply with a question."



ASK THE COURT'S PERMISSION TO ALLOW YOUR WITNESS TO SIT WHEN TESTIFYING



REQUEST A SHORT ADJOURNMENT WHEN THE WITNESS APPEARS TO NEED IT



ENSURE THAT DRINKING WATER IS AVAILABLE TO THE WITNESS

### 5.2.2 Consultation between the defence and the state witness

- A request by the accused, or his counsel, to consult with witnesses, should only be considered favourably in exceptional circumstances and with the consent of the witness See par 4.4 *supra* in this regard.
- When explaining to the witness that he/she has a choice whether or not to agree to such a consultation, the prosecutor is permitted to advise the witness against it.

### 5.3 **Protecting the interests of witnesses**



Prosecutors should consider the views, legitimate interests and possible concerns of witnesses.

### 5.3.1 Witness compensation

- Prosecutors should ensure that witnesses are informed of their rights, especially with reference to the possibility of compensatory orders in terms of section 300 of the CPA.
- Prosecutors must take reasonable steps to ensure that witnesses are compensated for expenses incurred as a result of court attendance.

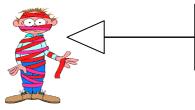
### 5.3.2 Confidentiality

- Prosecutors should not participate in public discussions of cases that are still pending.
- The prosecutor must treat all discussions with witnesses as private and confidential.

A famous actress is murdered. You are the prosecutor in this matter. The docket contains many explicit photographs of the deceased. You are pestered by friends and colleagues who want to see the photos. THE PRIVACY AND DIGNITY OF VICTIMS MUST BE GUARDED VIGILANTLY.

### 5.3.3 Protecting witnesses against themselves

- Prosecutors should guard against withdrawing cases solely on the ground that the accused has compensated or reimbursed the complainant or on the ground that a complainant or victim requests a discontinuance of the prosecution.
- Prosecutors must exercise due care when approached by a victim who is in a close relationship with the accused, e.g. a victim of domestic violence, or a parent in a "child abuse" case.
- In domestic violence cases there is such a high potential for manipulation that prosecutors should only withdraw charges of this nature under very exceptional circumstances. In such cases the written consent of the complainant should be obtained and filed in the case docket.



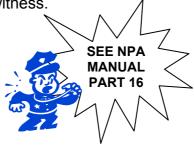
Authorisation must be obtained from the DPP/Deputy DPP when a prosecutor wants to withdraw a domestic violence case.

### EXAMPLE

A seven year old complainant was raped by her stepfather. Her mother requests you to withdraw the charge as the accused is the sole breadwinner of the family. IT IS NOT IN THE INTEREST OF JUSTICE TO WITHDRAW CHARGES UNDER THESE CIRCUMSTANCES.

### 5.3.4 Protection against intimidation and tampering

- Prosecutors must at all times consider the safety of witnesses.
- Access to the relevant parts of the docket should be opposed where the witness may be intimidated or tampered with, should his/her identity be made known through this disclosure.
- State advocates/prosecutors should refrain from adding the name of a witness to the list of witnesses, where his/her safety is at stake.
- The use of closed circuit television, intermediaries, *in camera* proceeding and the prohibition of publication of certain information, must be considered and utilized where necessary to protect the interests of witnesses.
- Prosecutors must take immediate action against anyone who harasses, threatens, injures or intimidates any witness.
- A witness should not be unduly exposed to the accused or other persons who may make him/her feel intimidated.
- Should the accused/defence approach the witness directly and without consent of the prosecutor or the court, the prosecutor must immediately bring this to the attention of the court and do what is necessary to protect the witness.



### 5.3.5 Trauma management

- The trauma suffered by victims must be recognised from the start of the investigation until the finalization of the case.
- The physical, emotional and psychological well-being of the victim must be given precedence.
- Prosecutors are expected to liaise and co-operate with nongovernmental organisations that provide services to traumatized victims, where possible.

- Prosecutors should strive to create an environment where victims will choose to report crimes that have been committed against them and where they will feel affirmed and supported.

### 5.3.6 Protection of witnesses – bail



- Where appropriate and possible, victims should be consulted prior to the bail hearing, to ensure that all relevant information is gathered and considered.
- Prosecutors should see to it that the victim is informed of the result of a bail application.
- Where bail is granted, special conditions relating to contact with witnesses, may be necessary.
- Witnesses affected by bail conditions, should be informed of the procedure to follow, should the accused contravene any.

#### EXAMPLE

An accused charged with raping a co-worker brings a formal bail application and is released. The victim, under the impression that the person that has brutally violated her dignity is in custody, goes to work and runs into the accused. INSTRUCT THE INVESTIGATING OFFICER TO INFORM VICTIMS OF THE RESULTS OF BAIL APPLICATIONS.

### 5.3.7 Postponements

- Unnecessary delays should be avoided at all cost.

- Delays in finalizing the case are usually detrimental to witnesses.
- Witnesses should be kept updated with the reasons for any delay.

A nine year old girl has been indecently assaulted and molested by her father over the course of many years. His trial has been postponed five times and she has been expected to attend the court every time. UNNECCESSARY DELAYS TRAUMATIZE WITNESSES AND INFLUENCE THE QUALITY OF EVIDENCE.

### 5.3.8 Transparency

- In making decisions concerning the withdrawal and reduction of charges, plea offers etc., prosecutors must, where appropriate, consult with affected parties.
- The complainant should be informed of the outcome of the trial.

### EXAMPLE

The accused has been acquitted after assaulting her neighbour. The court found her version of self-defence to be reasonably possibly true. The complainant is outraged at the verdict. ASSIST THE COMPLAINANT IN UNDERSTANDING THE REASONS FOR THE JUDGMENT.

### 5.3.9 Protecting the witness whilst on the witness stand

- Prosecutors must object to unnecessary, aggressive or badgering cross-examination of state witnesses.

#### EXAMPLE

The defence counsel is cross-examining your witness in a fraud case. He is extremely sarcastic and fires questions at the witness without giving him an opportunity to answer. IT IS YOUR DUTY TO PROTECT YOUR WITNESS BY OBJECTING TO THIS KIND OF ABUSIVE QUESTIONING.

### 5.3.10 Sentencing

- During sentencing, prosecutors must place all aggravating circumstances on record. This also applies where the accused pleads guilty.
- Where applicable, prosecutors must apply for a compensatory order in terms of section 300 of the CPA.
- Where applicable, prosecutors must apply for an order in terms of the CPA for the declaration of the accused as a habitual or dangerous criminal in order to protect the victim and larger community.

#### EXAMPLE

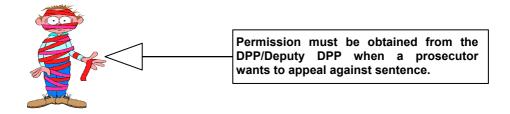
An accused pleads guilty to a charge of robbery with aggravating circumstances. The victim has not only sustained serious physical injuries but has also lost his job as a result of his lengthy hospitalisation. BRING ALL RELEVANT AGGRAVATING CIRCUMSTANCES TO THE ATTENTION OF THE COURT.

### 5.3.11 After the trial

- Prosecutors, who are of the view that the judgment or sentence given in a particular case is incorrect or improper, should in deserving cases, consider instituting appeal proceedings.



The accused is an attorney and was convicted on seven counts of theft of trust funds. The magistrate imposes a suspended sentence, which is clearly shockingly, inappropriately light. IT IS YOUR DUTY TO SEE TO IT THAT APPEAL PROCEDURES ARE IMMEDIATELY INITIATED.



### 5.4 Deviations from statements and refusal to testify

- Where a state witness, whilst giving evidence, deviates in a material way from his/her statement, the prosecutor must bring this to the attention of the court.
- In cases where the defence or the accused is not in possession of a copy of the statement it must be made available to them.
- A witness must be given an opportunity to give an explanation for his/her deviation from a statement. In the absence of a satisfactory explanation, immediate steps should be taken with a view to a possible prosecution of the witness.



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## **CHAPTER 6**



### **PROFESSIONAL INTEGRITY**

### AND

### RESPONSIBILITY

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### Professional integrity and responsibility

The integrity of a prosecutor must be beyond reproach.

Prosecutors should set a shining example as law abiding citizens.

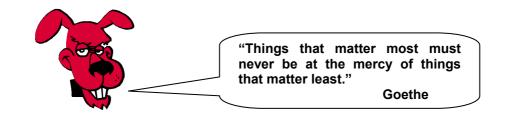
### 6.1 Dishonest behaviour

- The honesty of a prosecutor must be beyond reproach.
- No prosecutor may possess or wrongfully use the property of the NPA, another employee or member of the public, without permission.

### EXAMPLE

You are getting married. Not only do you use the phone in your office to make all the necessary arrangements with your guests and caterers, but you also use the office stationery, computer and printer to print your wedding invitations. THIS IS THEFT.





- No prosecutor, may, knowingly, make any false representations.
- Never falsify records, or other documentation.
- Never give false statements or evidence in the execution of duties.



You attended a week-long prosecutors' course. When submitting your claim, you indicate that you travelled daily, with your own vehicle, from your house to the venue and back. In actual fact one of your colleagues, travelling in an official government car, gave you a lift everyday. THIS IS FRAUD.

- No prosecutor must allow him/herself to be bribed.



### EXAMPLE

An accused wants to destroy the evidence against him. In exchange for R10 000 you give him the docket. THIS IS CORRUPTION.



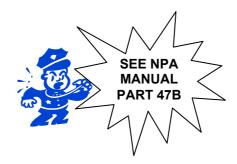
### 6.2 Gifts and favours



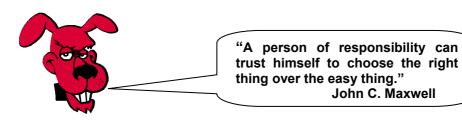
- No member of the NPA may request, elicit, give or accept, any gift, donation, treat, favour or sponsorship, which may compromise, or may be perceived to compromise, his/her professional integrity or that of the profession as a whole.
- The perception of integrity is as important to the NPA as integrity itself.
- It should be considered whether a third party, on becoming aware of the gift, might lose faith in the integrity of the system, despite the fact that both giver and receiver have innocent motives.
- Prosecutors should be alert to the fact that persons with improper motives usually tend to start with small, seemingly innocent favours.



 No prosecutor shall accept any compensation in cash or otherwise from a member of the public, or another employee, for performing his/her duties, without written approval from the NPA.



You receive a traffic representation from X and decide, on the merits of the case, not to proceed with the prosecution. After receiving the great news, X brings you a huge box of chocolates in order to thank you. You accept the chocolates and two days later X is back with two more traffic representations. WHEN RECEIVING ANY GIFT, FAVOUR, OR TREAT, CONSIDER WHETHER THE GIVER WOULD TRULY NOT EXPECT ANYTHING IN RETURN FOR IT E.G.A MORE CO-OPERATIVE ATTITUDE ON YOUR PART IN FUTURE.



### 6.3 Abuse of position

- No prosecutor may abuse his/her position to promote or to prejudice the interest of any political party.



#### EXAMPLE

A high ranking member of a political party that you support, assaults a prostitute, whilst in a drunken stupor. The public image of your party is at stake and you decide not to prosecute. THIS IS ABUSE OF POWER.

- No prosecutor may abuse his/her position to benefit him/her personally or to benefit friends or family.



No prosecutor may abuse his/her position to settle personal vendettas.



EXAMPLE

Your ex-boyfriend is involved in a bumper bashing. You have to decide whether to prosecute or not. The damage is minimal and the situation unquestionably calls for an admission of guilt fine to be set. To get back at him you to set the matter down for trial. THIS IS ABUSE OF POWER.

- Never use or disclose any official information for personal gain or gain of others.

### EXAMPLE

A well-known tabloid magazine offers you a lot of money to provide inside information about a highly sensational case in which you are the prosecutor. THIS IS ABUSE OF POWER.



- No prosecutor should mismanage the finances of the NPA/State.
- No prosecutor should damage and/or cause loss of NPA/State property.

A very expensive laptop computer is entrusted to you. You leave your office without locking it to go to the restroom. On your return you find that the laptop has been stolen. ACT RESPONSIBLY WHEN ENTRUSTED WITH OFFICIAL PROPERTY.



- No prosecutor should prejudice the administration, discipline or efficiency of the NPA.

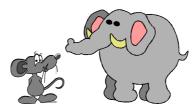
### EXAMPLE

You stretch your fifteen minute tea-break to an hour. BEHAVIOUR OF THIS NATURE IS DETRIMENTAL TO THE DISCIPLINE AND EFFICIENCY OF THE NPA.

### 6.5 Insubordination

- Lawful orders, routine instructions and NPA guidelines should be adhered to.
- A prosecutor, should to the best of his/her capability, prevent and actively oppose any violation of the NPA guidelines.

Your application for leave is denied due to shortage of staff. You wilfully disregard this decision and take unapproved leave of absence. DO NOT DISOBEY DIRECT ORDERS.



### 6.6 Inappropriate behaviour towards employer

- A prosecutor should never conduct him/herself in an improper, disgraceful and unacceptable manner.
- Prosecutors should not be absent from work without valid reason or permission.



- Prosecutors may not sleep on duty.



- Prosecutors should not perform poorly or inadequately.
- Refrain from using, or being under the influence, of alcohol or drugs while on duty.



- Avoid smelling of alcohol while on duty.



- A prosecutor should never incite other personnel to engage in unprocedural and/or unlawful conduct.

### EXAMPLE

There's a sale on at your favourite clothing store and you feel the urge for some retail therapy. You leave the office without permission in order to do some shopping and only return three hours later. BEHAVIOUR OF THIS KIND IS TOTALLY INAPPROPRIATE.

### 6.7 Inappropriate behaviour towards colleagues

- Never discriminate against others on the basis of race, gender, disability, sexuality or other grounds stipulated by the Constitution.
- Avoid disrespectful, abusive or insolent behaviour towards others whilst on duty.
- Never intimidate or victimize fellow employees.
- Do not sexually harass colleagues.



- Never assault or threaten to assault another employee.



- It is not desirable to borrow from or lend money to colleagues and co-workers.

- Avoid involvement in any so called "office politics".
- Do not gossip about your colleagues.



- Avoid improper interpersonal relationships.



### EXAMPLE

You and the new love of your life are both prosecutors at the same office. Although "love is blind", your colleagues and the public are not. AVOID ANY INAPPROPRIATE EMOTIONAL and PHYSICAL DISPLAYS.



### 6.8 Confidentiality

- Prosecutors should not participate in public discussions of pending cases.



- Do not disclose confidential information about colleagues.

EXAMPLE You stumble across a colleague's application for sick leave. The reason for applying for this leave is HIV-related. KEEP CONFIDENTIAL INFORMATION TO YOURSELF.

- Prosecutors should refrain from making media statements and public comments or communications.





If an ordinary prosecutor is required to make a statement to the media, comment in public or deliver a public address, the authorisation of the DPP must be obtained.

### EXAMPLE

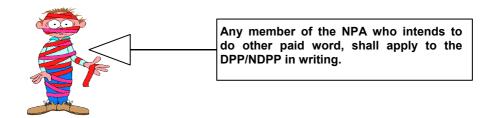
Everybody, including you, is outraged by the acquittal of the accused. When leaving the courtroom you are cornered by a journalist and asked to comment on the verdict of the Magistrate. As tempting as this may be, REFRAIN FROM MAKING UNAUTHORISED STATEMENTS TO THE MEDIA.



6.9 The performance of other paid work



- No prosecutor shall perform remunerative work without the authorisation of the NDPP.



EXAMPLE

You are approached by a university to lecture part time. REMEMBER TO OBTAIN THE NECESSARY PERMISSION.





## CHAPTER 7



ACCOUNTABILITY

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### Accountability

- All prosecutors shall respect and comply with the terms of the NPA Code of Conduct.
- Prosecutors, being civil servants, are still bound by the Disciplinary
  Code and Procedures for the Public Service.
- In the event of transgressions appropriate disciplinary steps may be taken in terms of the applicable legal prescripts.
- Prosecutors must report all instances of unprofessional conduct by colleagues or other court officials to the relevant supervising prosecuting authority.
- Representations concerning the conduct of a prosecutor should be referred to the relevant supervising prosecuting authority.
- When negative remarks are made about members of the NPA by judges on appeal, concerning the presentation of the original case or the appeal itself, state counsel should report the matter to the DPP for appropriate action.



ANONOMOUS CALLS CAN BE MADE TO THE DEPARTMENT OF JUSTICE ANTI-CORRUPTION AND FRAUD HOTLINE TO REPORT ANY MISCONDUCT BY MEMBERS OF THE NPA

THE END