

GUIDANCE FOR THE PROPER CONDUCT OF ADMINISTRATIONS ~~to~~ SECTION 74 OF THE MAGISTRATE'S COURT ACT

1. Administrators should always conduct themselves in a professional manner. In particular, they should explain the administration procedure to the debtor and the cost implications thereof.
2. Administrators should apply their minds to whether there is financial benefit for the debtor-client in making the application for an administration order. If the cost implications are such that the debtor will, in all likelihood, be making payments against ever-growing debt, the administrator should explain this to the debtor and take steps to establish whether there is any likelihood of the debtor's financial position improving so that payments into the administration may be increased, thereby reducing the debts in time.
3. Administrators have a duty to negotiate and arrange terms for payment of any debt with the creditor, wherever possible, in the presence of the debtor or, at least, by keeping the debtor informed, in writing, of the ambit of the negotiations.
4. Administrators should consult with the debtor-client before moving the application for an administration order and should explain all the implications thereof, including the method of payment and the cost implications for each distribution.
5. The advice given to the client-debtor should be recorded, in writing. It is specifically recommended that the letter addressed to the client-debtor, confirming the above explanation, should be attached to the application for issue of the administration order. The letter should make clear to the debtor, *inter alia*, -
 - 5.1 how the distribution is effected; namely, that an emoluments attachment order will be issued in terms of which a regular amount will be deducted from the debtor's salary, alternatively, an order will be issued directing that the debtor make payment of a specific amount to the administrator on a regular basis;
 - 5.2 what the costs of the application and the administration will be;
 - 5.3 the sum of the amounts paid by the debtor to the administrator will be distributed quarterly, or at such interval as may be ordered, to creditors;
 - 5.4 the projected period in which the debt and costs of the administration will be settled;

- 5.5 interest continues to run on debts owed by the debtor;
- 5.6 it is in the debtor's best interests to pay the highest amount possible into the administration in order to settle the debts as soon as possible and to prevent further interest/costs accruing thereto;
- 5.7 the debtor must be present in court, as applicant, when the application for an administration order is made. Debtors should be informed of the date, time and place of the hearing of the application;
- 5.8 payments not made into an attorney's trust account do not enjoy the protection of the Attorneys' Fidelity Fund;
- 5.9 that the debtor may, at any time during business hours, on reasonable notice, inspect his/ her account with the administrator to ensure that payments are correctly recorded and to satisfy him/ herself that distributions have been correctly effected.
6. Costs should be raised in accordance with the Magistrate's Court tariff;
7. Administrators have a duty to verify to debtors the balance owing at any given time, by way of a written statement, providing a full breakdown of payments received, costs debited and monies disbursed.
8. Payments to the creditors should be made in terms of the order.
9. Payments received from employers, directly into the attorneys trust account, should be receipted and/or should be recorded as cashbook entries to facilitate reconciliation of the attorneys trust account and careful recordal of payments received from each debtor.
11. Administrators should reconcile monies received, monies paid out and distribution costs on a quarterly basis.
12. Administrators have a duty to ensure that, where the creditor writes off the claim, such claim is withdrawn from the administration and that the debtor's payments are distributed *pro rata* across the balance of the claims of remaining creditors.

13. Administrators should act in the interests of the debtor-client while recognising a duty to the creditor. To this end, the sum of the debtor's payment should be reviewed annually.