

CANDIDATE: ADVOCATE R STRYDOM SC

**COURT FOR WHICH CANDIDATE APPLIES: HIGH COURT GAUTENG
– NORTH AND SOUTH DIVISIONS**

1. The candidate's appropriate qualifications

1.1. The candidate holds the following degrees:

1.1.1. B.Com (1977);

1.1.2. LLB (1979);

1.1.3. LLM – Constitutional Law (1994); and

1.1.4. LLM – Corporate Law (2004).

1.2. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. The candidate's long career as a member of the Johannesburg Bar and his service as an acting judge of the South Gauteng High Court indicate that he is a fit and proper person for judicial appointment.

2.2. No adverse comments have been received.

3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa

3.1. The candidate is a white man so his appointment would not do so.

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4. The candidate's knowledge of the law, including constitutional law

4.1. The candidate has practiced as an advocate for 35 years. He initially practiced primarily in the field of criminal law. He has since expanded his practice to include a wider range of civil litigation. He has experience in the following areas of law:

4.1.1. insolvency;

4.1.2. administrative law;

4.1.3. property law;

4.1.4. regulatory law;

4.1.5. banking law;

4.1.6. law of contract; and

4.1.7. corporate law.

4.2. The judgments attached to the candidate's application demonstrate a sound grasp of legal principle and precedent, as well as ability to research and apply principles of law to facts.

4.3. A number of unreported judgments, written by the candidate, have been attached to his application and other unreported judgments have been obtained by the Society of Advocates. They indicate that the candidate has presided over matters involving property law, civil procedure, law of succession, contract law, welfare and regulatory compliance and criminal law.

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- 4.4. The candidate has appeared in constitutional matters and he has obtained an LLM in constitutional law.
- 4.5. In his application the candidate states that he is a legal advisor for the JSE Ltd and has been for the last ten years. He states that this requires a specialised knowledge of listing requirements and the JSE rules. The candidate is also experienced in aspects of regulatory compliance and he has appeared before the tribunals of the Financial Services Board.

5. The candidate's commitment to the values of the Constitution

- 5.1. The candidate acted *pro deo* for defendants facing serious criminal charges for many years. He has invested much of his practice in defending people who could not afford to pay for their own defences. These activities indicate a commitment to act on behalf of vulnerable defendants who would otherwise not have access to competent legal representation.
- 5.2. The candidate appeared for the 18 accused in the matter of *S v Mkhize and Others*, relating to the Boipatong massacre. The candidate appeared for the accused in the High Court, the SCA and in the Truth and Reconciliation Commission, where the accused were granted amnesty.
- 5.3. The candidate was the Legal Aid Bureau representative at the Johannesburg Bar for 2 years in the late 1980s. He was responsible for distributing *pro bono* briefs to junior counsel.
- 5.4. These activities indicate a commitment to act on behalf of vulnerable defendants.

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- 5.5. The candidate obtained an LLM in constitutional law in 1994 to prepare to practice under the Constitution and he has appeared in the Constitutional Court.
- 5.6. More recently, the candidate has appeared in the Constitutional Court in the matters of *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others* (with the citations 2014 (1) SA 604 (CC) and 2014 (4) SA 179 (CC)).
- 5.7. The candidate provided a series of unreported judgments, one of which was a judgment handed down in the case of *Foundation of Love Social and Welfare v The Department of Social Development and Others*. In this case the candidate prepared and handed down a judgment that dealt with the sensitive issue of vulnerable children and their interests. The matter related to a dispute involving an unregistered childcare facility that sought the return of children from a registered and regulated childcare centre. The children had been kept in disturbing conditions and the candidate acknowledged the court's role in protecting minor children.
- 5.8. The candidate has an interest in, and a concern for, the values of the Constitution.

6. Whether any judgments have been overturned on appeal

- 6.1. In his present application the candidate reports that two of his judgments have been taken on appeal. He has not given the references to those

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judgments. He states that one of the appeals was dismissed and that the other appeal was withdrawn before the appeal hearing.

- 6.2. In an earlier application for appointment the candidate reported that one of his judgments, the case of *Myhill NO v Road Accident Fund*, had been taken on appeal.
- 6.3. In the *Myhill* matter, the candidate granted an order setting aside various compromises concluded on behalf of two minor children with the Road Accident Fund. The minor children had been severely injured in a road accident.
- 6.4. The candidate held that the settlements entered into on behalf of the minor children were unreasonably low and not in their best interests, as required by section 28 of the Constitution.
- 6.5. The Road Accident Fund appealed the judgment to the SCA and the appeal was dismissed on 13 May 2013.
- 6.6. The case demonstrates that the candidate has a concern for, and sensitivity to, the rights of children, a vulnerable group afforded special protection by the Constitution.

7. The extent and breadth of the candidate's professional experience

- 7.1. The candidate has practiced as an advocate for 35 years, five of them as a silk. During the period of his practice he has appeared in a wide range of cases involving varied and divergent areas of the law.

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7.2. The candidate has a broad and extensive professional experience that will serve him and the Bench well if appointed.

7.3. In addition, the judgments attached to the candidate's application demonstrate that he is capable of producing reasoned and researched judgments in a wide range of areas of law.

8. The candidate's linguistic and communication skills

8.1. The candidate's successful career as an advocate for 35 years, and his status as a senior counsel, both indicate that he has strong linguistic and communication skills.

8.2. This is borne out by the judgments he has attached to the application which are clear, logical, and carefully reasoned.

9. The candidate's ability to produce judgments promptly

9.1. The candidate has no judgments outstanding from any terms during which he has acted as a Judge.

9.2. In his application the candidate states that during 2014 he sat as an acting Judge at Palm Ridge High Court in order to conclude the hearing of a part-heard matter. The candidate states that this was outside of the period of his acting appointment. The candidate sat for a period of three weeks outside of his acting appointment in order to conclude the hearing.

9.3. He also states that he worked over December 2014 and January 2015 to prepare the judgment and have it delivered.

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- 9.4. Similarly, a criminal matter over which he presided, whilst acting in Mpumalanga, extended beyond the period of his acting appointment. The candidate sat for a period of three weeks outside of his acting appointment and delivered a lengthy judgment less than one month after the matter was argued.
- 9.5. The candidate appears to be extremely diligent in attending to and preparing judgments timeously.

10. The candidate's fairness and impartiality

- 10.1. The candidate has a reputation for fairness and impartiality.
- 10.2. The candidate provided a number of unreported judgments, two of which dealt with sentence, viz the cases of *S v Albert Justice Morake* and *S v Haile Tsedek Woolde-Sellaise*.
- 10.3. In the *Morake* case the candidate handed down a judgment on sentence in a case in which the accused had been convicted of 144 counts, many of which were serious offences and 30 of which were counts relating to sexual offences and related matters. The candidate sentenced the convicted party to an extended custodial sentence, having taken into account the interests of the community as well as the rights of the accused and any need to ameliorate the severity of the sentence.
- 10.4. In the *Woolde-Sellaise* case the candidate sat as a Judge in an appeal against sentence. The accused had been convicted to six years in the Magistrates' Court on minor drugs and immigration charges. The candidate found the sentence to be shockingly inappropriate and

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accordingly set the sentence aside and replaced it with an appropriate sentence.

10.5. The two cases illustrate the candidate's fairness and impartiality when dealing with the difficult question of sentencing and the application of the requisite principles of sentencing to diverse criminal matters.

10.6. No adverse comments have been received.

11. The candidate's independent mindedness

11.1. As an acting judge, the candidate has demonstrated independent mindedness.

11.2. In the unreported case of *Hicks and Another vs the State* the candidate prepared a well-reasoned dissenting judgment in an appeal against conviction and sentence. This case illustrates the candidate's independent mindedness and willingness to apply himself at all times

11.3. No adverse comments have been received.

12. The candidate's ability to conduct court proceedings

12.1. The candidate has presided over numerous proceedings as an Acting Judge of the High Court and as a Commissioner in the Small Claims Court. He has a good reputation and has demonstrated an ability to conduct court proceedings smoothly and efficiently.

12.2. No adverse comments have been received.

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13. The candidate's administrative ability

- 13.1. The candidate was involved in distribution of Legal Aid briefs in his early years at the Bar. He was also group manager and then leader for group 1312 for a number of years, and organised successful events at subcommittee level.
- 13.2. The candidate has been a member of the Mpumalanga Society of Advocates since 2015 and is also a founding member of that Society.
- 13.3. The candidate's successful occupation of positions requiring administrative work indicates that he is a skilled and efficient administrator.
- 13.4. No adverse comments have been received.

14. The candidate's reputation for integrity and ethical behaviour

- 14.1. The candidate has a reputation for honesty and integrity.
- 14.2. No adverse comments have been received.

15. The candidate's judicial temperament

- 15.1. The candidate has a reputation for fairness and patience in conducting proceedings in his court.
- 15.2. No adverse comments have been received.

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16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community

- 16.1. The candidate was a representative of the Legal Aid Bureau at the Johannesburg Society of Advocates for 2 years. His duties entailed the distribution of pro bono briefs to junior counsel.
- 16.2. The candidate was also a Commissioner of the Small Claims Court for approximately 8 years, sitting as a Commissioner at the Hillbrow Magistrates' Court.
- 16.3. For a decade the candidate has also lectured pupil advocates in criminal procedure and evidence and he has acted as an oral examiner for many years.
- 16.4. The candidate holds a Master's in Constitutional Law and he has appeared with a leader in the Constitutional Court. He has also represented clients at the Truth and Reconciliation hearings. He also did work on a *Pro Deo* basis when he joined the Bar in his early years.
- 16.5. The candidate exhibits a strong motivation to assist the community around him and for many years has engaged in non-paying tasks that have benefitted the needs of the community.
- 16.6. No adverse comments have been received.

17. The candidate's potential

- 17.1. The candidate has extensive experience in the practice of law. His experience is varied and is not particularised or specialised to one

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particular field. The candidate exhibits due deference to the Constitution and its tenets and he has actively pursued a practice involving constitutional law and he demonstrates a clear commitment to its values.

17.2. Because of the candidate's extensive and varied practice his appointment would strengthen the integrity of the Bench. The candidate is clearly experienced and this will facilitate any functions and duties that he is required to perform if appointed.

17.3. During the period of his acting appointment in the South Gauteng High Court he prepared and handed down approximately 40 judgments. Two of his judgments have been appealed, one unsuccessfully while the other was withdrawn before the hearing of the appeal.

18. The message that the candidate's appointment would send to the community at large

18.1. The candidate's appointment would indicate that sound legal practical experience with independent decision-making and ability are important considerations in relation to judicial appointment to the South Gauteng High Court.

18.2. Although in terms of racial composition the candidate would not add to the diversity of the South Gauteng High Court, his skills would be of value to that bench.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None

Unreported decisions

Foundation of Love Social and Welfare v Department of Social Development and Others 25319/2012

Paddy Hicks and Another v The State A609/2008

The State v Haile Tsedek Woolde-Sellaise 5/3049/2013

The State v Albert Justice Morake 198/2013

Judgments upheld on appeal

Myhill, Ele N.O. v Road Accident Fund

Judgments overturned on appeal

None