

CRITERIA AND PROCEDURES APPLIED BY THE JOHANNESBURG BAR IN RESPECT OF THE CONFERMENT OF SILK

A. THE PURPOSE AND CHARACTER OF SILK

1. The status of senior consultus, or silk, is to be understood as a high honour conferred on an individual by the Head of State. This dimension of silk is at the heart of the concept and ought not in any way to be undervalued.
2. The Bar Council discharges a responsibility, in accordance with tradition of recommending to the Head of State, an individual known to it, for the conferment of silk. This responsibility is a critical one and the Head of State, and the Judge President of the Division through whose intermediation the recommendation is conveyed to the Head of State, are entitled to have unreserved confidence in the recommendations made by the Bar Council

B. CRITERIA BY WHICH CANDIDATES FOR THE CONFERMENT OF SILK ARE JUDGED

1. The criteria as set out below are designed to operate as guidelines in respect of the nomination of members of the Bar as persons appropriate to recommend for the conferment of senior consultus status. The guidelines are not to be regarded as definitive or exhaustive and the weight to be attached to individual criteria may vary. It will be apparent that these criteria are time honoured ones which have for many years applied in respect of considerations in relation to the conferment of silk.

2.

2.1 General criteria

- 2.1.1 The echelon of silks within the body of members of the Bar is intrinsically that of a leading minority.

2.1.2 There may be more suitable candidates in any given year, than can be accommodated, having regard to the concept of silk and the needs of the Bar.

2.1.3 It necessarily follows that only the most meritorious candidates in any particular year can be recommended for silk in that year. This necessarily involves persons who may otherwise have satisfied the criteria, not being recommended for silk in any particular year. If a candidate is not amongst the most meritorious candidates in a particular year, no recommendation in respect of that candidate will be made. It follows that a candidate who has not been recommended in any particular year will not enjoy any preference in any subsequent year in which the candidate may be nominated, by reason of the fact that the candidate had previously been nominated.

2.1.4 In deciding on the recommendations that may prudently be made for the conferment of silk in any given year, due regard shall be had to the racial and gender composition of the body of silks at the Bar. In addition regard may be had to the specialised fields of practice at the Bar.

2.2 The criterion of the nature of practice

2.2.1 The practice should be a large one consisting of good quality work, having regard, inter alia, to the complexity of the work subject to clauses 2.2.2 and 2.2.3 below. Although preference will be accorded to practices which embody the whole spectrum of senior work available at the Bar, due regard will be accorded to the expertise of a candidate in a specialised field of practice.

2.2.2 No particular area or type of practice (for example a so-called commercial practice) will be accorded any more or less weight than any other.

2.2.3 Consideration must be given to the reality of race-based and gender-based bias or skewing of briefing patterns which may tend to result in the exclusion of an otherwise worthy candidate from strong representation in certain areas of practice.

2.3 The criterion of integrity and honourable conduct

2.4 The criterion of seniority

Seniority is a factor which is taken into account. Subject to the caveat that seniority is not a determinative factor but is to be considered and weighed together with other criteria, candidates who have less than twelve years seniority at the Bar, may not ordinarily be recommended for the conferment of silk.

2.5 The criterion that the Bar is willing to sponsor the candidate

2.5.1 Suitability for Silk is too intangible a notion to be regulated entirely by the criteria set out above.

2.5.2 A suitable candidate must be a person of perceived ability, leadership qualities and maturity of judgment.

2.5.3 In determining whether a candidate has the requisite leadership qualities, the Silks Committee will give due weight to the candidate's demonstrable commitment to transformation that is objectively verifiable with reference to any relevant factors including but not limited to:

2.5.3.1 the extent to which the candidate has actively played a mentoring role to black and/or women junior members;

2.5.3.2 the degree to which the candidate has generally participated in the enhancement of transformation through the structures of the Bar or any other structures recognised by the Bar Council for that purpose, including individual and Group transformation initiatives;

2.5.3.3 the extent to which the candidate has involved black and/or women junior members in matters whether on paid briefs or utilising junior funds set up by the Bar structures for that purpose or pursuant to the “second junior” rule.

2.5.4 In determining a candidate’s commitment to transformation under this criterion, the input of junior members who may have interacted with the candidate in the above respects (both in the candidate’s group and otherwise) garnered by the group leaders in the application process, will be taken into account.

2.5.5 The Silks committee will take due cognisance of the fact that a demonstrable commitment to transformation as a material aspect of the criterion of leadership has only been introduced as being part of these criteria in February 2010.

2.5.6 Experience as a legal practitioner prior to joining or rejoining the Bar may, in appropriate circumstances, be taken into account.

2.5.7 Recognising that the best interest of the Bar is served by a diverse leadership, consideration of race and gender must be taken into account in the selection of candidates for recommendation.

2.5.8 In the last analysis, a candidate who, in any particular year is recommended for the conferment of Silk is a person whom the Bar is willing to sponsor as a leader of the Bar.

C. PROCEDURE TO BE FOLLOWED IN REGARD TO NOMINATIONS FOR THE CONFERMENT OF SILK

1. The Bar Council shall, annually, before the Easter recess, publish a notice to the membership inviting applications for silk to be lodged with the Chair of the Bar Council. Any specific factor that may affect the process in the given year should be stated in the notice.
2. A period of not less than four weeks must be granted for the receipt of applications and the closing date for the applications shall be stated in the notice.
3. An application shall consist of a memorandum by the applicant, stating the reasons why silk should be conferred on him or her. Attached to the memorandum shall be a completed application form. Application forms will be made available by the Bar Council at the offices of the Bar Secretariat. The Bar Council of any given year may amend the application form.
4. On the day after the closing date for the stated receipt of applications, the Chair shall compile a list of all the applicants in order of seniority, and the Chair shall cause the list to be published to the membership.
5. The completed application forms must be made available by the Chair for inspection by the membership in the Bar Library.
6. Any member, other than an applicant for silk, may, within seven days of the publication of the list, comment on any application. All such comments must be in writing, addressed to the Chair of the Bar Council and signed by the member making the comment.

7. Any adverse comment on any application shall be referred by the Chair to the concerned applicant and such applicant may within seven days after the period for comments closed, respond thereto in writing.
 - 7.1 Within the period referred to in paragraph 7 above, each group must circulate the names of all the applicants for silk to each member of the group and request junior members to express their views, such as they may be, on each applicant to the group leader. Each group leader must ensure that there is a system in place in his or her group to collate the views of the junior members of the group.
 - 7.2 Each group must, within the period referred to in the previous paragraph, convene a meeting of all the silks in the group. Members of the Silks Committee of the Bar Council shall not attend such meetings. Each applicant for silk should be considered and his or her suitability for silk should be debated. The leader of the group should convey the views of the juniors of the group to the silks of the group. The leader of the group should compile a list of all the applicants and indicate whether each candidate is an A, B, C or D candidate: "A" indicating a candidate enjoying an excellent reputation and who is ready for silk; "B" indicating a candidate with a good practice and would be an excellent candidate but whose application cannot be supported for reasons of reputation; "C" indicating a candidate with a good reputation but who is not yet ready for silk; "D" indicating a candidate who in the estimation of the silks of the group, should not be granted silk. If a particular candidate is unknown to the silks of the group, this should be noted. Any adverse comment should also be noted.
8. The Silks Committee, to wit all the silks on the Bar Council, shall, within a reasonable time of the closing date on which applicants may respond to adverse comments, meet, deliberate and identify the applicants who are to be nominated for silk.

9. The Silks Committee shall, in the course of its deliberations:
 - 9.1 interview all group leaders or, if a given group leader is not a silk, a silk representing such group in respect of all applicants, and the group leader or silk shall convey the views of the silks and juniors of his group and hand it to the Silks Committee the schedule referred to in paragraph 7.2 and speak to it;
 - 9.2 receive any comments from the Deputy Judge President in respect of all applications;
 - 9.3 require each applicant to appear in person before the Silks Committee to be questioned on his or her application during which interview any adverse comments must be put to him or her. The Silks Committee may appoint a silk or silks to question the applicants but must ensure that each applicant is given the opportunity fully to deal with all adverse comments and to answer all questions put to him or her;
 - 9.4 not take into account any adverse comment which the candidate has not had an adequate opportunity to address.
- 10 Save as aforesaid, the deliberations of the Silks Committee will be private.
11. The Silks Committee must publish the names of successful applicants not later than fourteen days after the closing date on which applicants may respond to adverse comments.
12. Each unsuccessful applicant may within seven days after the date of publication of the names of the successful applicants, request the Chair to give reasons why the application was unsuccessful and the Chair shall be obliged to furnish such reasons, in writing, within a further fourteen days.