

CANDIDATE: **NORMAN DAVIS SC**

COURT FOR WHICH CANDIDATE APPLIES: **GAUTENG DIVISION**

1. The candidate's appropriate qualifications

- 1.1. B.Com (University of Pretoria 1984)
- 1.2. LLB (University of Pretoria 1986)
- 1.3. LLM (University of South Africa 1991)
- 1.4. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

- 2.1. Having been in the legal profession as an attorney from 1987 – 1989 and thereafter in the advocate's profession from 1989 – date (2017) and as silk from 2006 – date (2017) and the role the candidate played as a member of the PSA without ever any single complaint against the candidate, there is no reason to find that the candidate is not fit and proper.

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. His appointment would not help reflect the racial and gender composition of South Africa.

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

- 4.1. A scrutiny of the cases cited by the candidate in which he either appeared as counsel or presided as Acting Judge, reveals that the candidate has a sound knowledge of the law, including constitutional law. The candidate has experience in many areas of the law.
- 4.2. The candidate acted about 19 times as a judge in the Gauteng Division of the High Court, Pretoria. He has one reported judgment as an Acting Judge: *Safari Thatching Lowveld CC v Misty Mountain Trading 2 (Pty) Ltd* 2016(3) SA 209 (GP).
- 4.3. One of the candidate's judgments (*Nyathi v The MEC for the Department of Health, Gauteng* 2007 JDR 0224(T), in which the candidate made an order declaring part of the State Liability Act unconstitutional, was confirmed in *Nyathi v The MEC for Health, Gauteng* 2008 (8) SA 94 (CC).
- 4.4. Only one of the candidate's judgments has been reversed on appeal. The judgment is dealt with under paragraph 6 below.

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

- 5.1. The chairperson of the Pretoria Bar Council states that the candidate is known to be characterized by, amongst others, a person who “puts the values enshrined in the Constitution as bulwark to all other considerations ...”
- 5.2. The candidate's judgments in the *Nyathi* case (above) and in *Safari Thatching Lowveld CC v Misty Mountain Trading 2 (Pty) Ltd* 2016 (3) SA 209 (GP) demonstrate this commitment. Although the latter deals with business rescue, the candidate also considered the requirements of the Constitution.

6. Whether any judgments have been overturned on appeal

- 6.1. On appeal, the Full Bench of the Gauteng Division of the High Court, Pretoria, overturned the candidate's decision in *Neethling v MBD Securitisation (Pty) Ltd* (A809/2012 10843/1996)[2014] ZAGPPHC 377 (17 June 2014).

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

- 7.1. The candidate practiced as an attorney from 1987 to 1990. Since 1990 he has been practicing as an advocate. He became Senior Counsel in 2006.

- 7.2. Since he took silk in 2006, the candidate appeared in the following eight (8) reported judgments. Five of these judgments are listed in Page 10 of his application. The additional judgments are: *Land and Agricultural Development Bank of South Africa v Chidawaya and Another* 2016(2) SA 115 (GP); *Hepple and Others v Law Society of the Northern Provinces* [2014] 3ALLSA 408 (SCA), and *Swart v Starbuck and Others* 2016(5) SA 372 (SCA).

8. The candidate's linguistic and communication skills

- 8.1. Based on the language used in his judgments, the candidate has good linguistic and communication skills in English.
- 8.2. The candidate does not mention his proficiency in other languages. During his 2016 interview, on being questioned, the candidate confirmed that he is not proficient in African languages.

9. The candidate's ability to produce judgments promptly

- 9.1. The candidate's recent judgments have been delivered with admirable promptness. For instance:
- *Body Corporate Elma Park v Erf 195 Elma Park Ltd* (22421/2013) [2016] ZAGPPHC 873 (22 September 2016).

Matter was heard on: 14/9/2016

Judgment was delivered: 22/9/2016

- On an urgent hearing in *Moipone Group of Companies (Pty) Ltd v City of Tshwane Municipality* (13874/2017) [2017] ZAGPPHC 149 (29 March 2017):-

Matter was heard on: 16/3/2017

Judgment was delivered: 29/3/2017

- *Huijskens and Another v Minister of Home Affairs* (9745/2017) [2017] ZAGPPHC 180 (23 March 2017)

Judgment was delivered: 23/3/2017 (ex tempore)

- *Mangolele obo M v Road Accident Fund* (13758/13) [2017] ZAGPPHC 345 (1 March 2017)

Judgment was delivered: 1/3/2017

- 9.2. We could not find any late or outstanding judgment under the name of the candidate.

10. The candidate's fairness and impartiality

- 10.1. Based on his performance as an Acting Judge the candidate appears to be fair and impartial.
- 10.2. No adverse comments have been received.

11. The candidate's independent mindedness

- 11.1. The judgments delivered by the candidate display an adequate degree of independent mindedness.

12. The candidate's ability to conduct court proceedings

- 12.1. The candidate served as an Acting Judge 19 times. Mlambo JP (in 2015) held him in high regard in his ability to serve on the bench when called to do so. The candidate has therefore shown the ability to conduct court proceedings.
- 12.2. Members who appeared before the candidate confirmed his abilities to conduct court proceedings. Four members described the candidate as a Judge who proves to have read the papers before him. They shared the view that the reason why the candidate manages to inter-act effectively with counsel appearing before him in relation to matter at hand is that, he reads the papers before coming to court.

13. The candidate's administrative ability

- 13.1. The fact that the candidate first practiced as an attorney; was more than once, unanimously voted to the administration of Pretoria Society of Advocates as the chairperson of the Bar Council and that during his tenure resolutions were adopted by consensus rather than the casting of votes, speak volumes about the candidate's administrative competence. Members of the Pretoria Bar Council have confirmed this to the reviewers.

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

- 14.1. The candidate's nomination as chairman of the Pretoria Bar Council on more than one occasion indicates that the candidate enjoys reputation for integrity. This was confirmed by members of the Pretoria Bar, and is reflected in the nomination by the current chairman of the Pretoria Bar.

15. The candidate's judicial temperament

- 15.1. No adverse comments have been received. The candidate's ability to conduct court proceedings and to produce sound judgments promptly can be said to show a tendency to an appropriate judicial temperament.

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

16.1. Comments have been received to the effect that the candidate is committed to the cause of transformation of the advocate's profession. He has strived for the advancement of advocates from previously disadvantaged communities and the achievement of the ultimate ideal of equality within the profession. During his tenure as the chairman of the Pretoria Bar Council, the Bar Council secured and applied a policy of not less than 60% annual black admission in the pupillage programme.

16.2. On the level of the application of law the candidate has demonstrated a commitment to human rights, and the values and needs of the community.

17. The candidate's potential

17.1. There is no reason not to believe that the candidate has the potential to be a good judge and to contribute to transformation.

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

- 18.1. The candidate is white. The public may view his appointment as a failure to transform the judiciary. However, to members of the profession the candidate's appointment would send a message that white males who contribute to transformation and have a thorough knowledge of the law are not ignored.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED**Reported decisions**

1. *Du Plessis and Another v De Klerk and Another* 1996 (3) SA 850 (CC) (Candidate appeared as a junior in this matter)
2. *Fraser v Naude and Another* 1997 (2) SA 82 (W).
3. *Fraser v Children's Court Pretoria North and Others* 1997 (2) SA 261 (CC).
4. *Naude and Another v Fraser* 1998 (4) SA 539 (SCA). (Candidate appeared as a junior in this matter)
5. *Prinsloo v RCP Media Ltd t/a Rapport* 2003 (4) SA 456 (T).
6. *Nyathi v Member of the Executive Council for the Department of Health, Gauteng and Another* (26014/2005) [2007] ZAGPHC 16 (30 March 2007)
7. *S v Ngobeni* 1992 (1) SACR 628 (A).
8. *Palabora Mining Co Ltd v Coetzer* 1993 (3) SA 306 (T)
9. *Erf 1382 Sunnyside (Edms) Bpk v Die Chipl BK* 1995 (3) SA 659 (T).
10. *Vorster v Havemann* 1996 (4) SA 308 (T).
11. *Loretz v MacKenzie* 1999 (2) SA 72 (T).
12. *Unica Iron & Steel (Pty) Ltd v Mirchandani* 2016 (2) SA 307.
13. *Minnaar v Van Rooyen NO* 2016 (1) SA 117 (SCA).
14. *Afrisun Mpumalanga (Pty) Ltd v Kunene* 1999 (2) 599 (T).
15. *President of RSA v Reinecke* 2014 (3) SA 205 (SCA).

16. *Rian International Supply Co (Pty) Ltd v Mpumalanga Gambling Board* 1999 JOL 4871 (T).
17. *G&C Construction CC v De Beer* 2000 (2) SA 378 (T).
18. *Absa Bank Bpk v ONS Beleggings Bpk* 2000 (4) SA 27 (SCA).
19. *Tolo v Mngomezulu* 2001 (3) SA 669 (T).
20. *Siderov v Minister of Home Affairs* 2001 (4) SA 202 (T).
21. *Dexion Europe Ltd v Universal Storage System (Pty) Ltd* 2003 (1) SA 31 (SCA).
22. *Vorster and Another v Department of Economical Development, Environmental and Tourism, Limpopo Province* 2006 (5) SA 291 (T)
23. *Club Refrigeration CC v Pellow NO* 2006 (1) SA 230 (SCA).
24. *Mutual & Federal v De Costa* 2008 (3) SA 439 (SCA).
25. *Sim Road Investment CC v Morgan Air Cargo* 2009 (4) All SA 249 (GNP).

Unreported decisions

26. *Bader v SA council for Social Service Profession and Another* Case number 56790/2013.
27. *DITSONG Museum of South Africa v Fundi Projects (Pty) Ltd and Another* Case number 79639/2013.
28. *Law Society of the Northern Province v Khoza* Case number 53448/2014.
29. *Maahla v The State* case number A331/2014.
30. *Mineral Resource Development (Pty) Ltd, In re Macro MRD JV (Pty) Ltd v Macroton CC t/a Macro Recycling and Another* Case number 14575/2014.

31. *Mors and Another v Absa Bank and Others* Case number 26705/2013.

32. *Ramahlo NO and Others v Doubel NO and Others* Case number 74784/2013.

33. *Van Deemter and Others v The Master of the High Court Pretoria and Others* Case number 74302/2013.

34. *Van Jaarsveldt NO v Van Jaarsveldt NO and others* Case number 6190/2014

Judgment upheld on appeal

35. *Nyathi v Member of the Executive Council for the Department of Health, Gauteng and Another* (26014/2005) [2007] ZAGPHC 16 (30 March 2007)

Judgments overturned on appeal

36. *Neethling v MBD Securitisation* (A809/2012 10843/1996) [2014] ZAGPPHC 377 (17 June 2014).