

CANDIDATE : MS MAREENA OPPERMAN

APPLICANT: MS MAREENA OPPERMAN

**COURT FOR WHICH APPLICANT APPLIES: HIGH COURT, FREE
STATE DIVISION, BLOEMFONTEIN**

1 The candidate's appropriate qualifications

- 1.1 The candidate holds the following academic qualifications:
- 1.1.1 Baccalaureus Iuris (B. Iuris) (University of the Free State, March 1990);
- 1.1.2 Baccalaureus (LLB) (University of the Free State, March 1994);
- 1.1.3 Passed the Attorneys Admission Exam (December 1996)
- 1.1.4 Magister Legum (Criminal Procedure, Law of Evidence, Sexual Offences and Domestic Violence) (University of the Free State, February 2005)
- 1.1.5 Magister Legum (Serious Economic Offences and Labour Law) (University of the Free State, September 2007).
- 1.2 The candidate is appropriately qualified.
- 1.3 The candidate was a Clerk of the Criminal Court, Bloemfontein during the period 1982 to 1984.

CANDIDATE : MS MAREENA OPPERMAN

- 1.4 The candidate served articles as a Clerk at the Director of Public Prosecutions during the period 1987 to 1990.
- 1.5 The candidate was a District Court Prosecutor during the period 1990 to 1992.
- 1.6 The candidate was the District Court Control Prosecutor during the period 1992 to 1994.
- 1.7 The candidate was a Regional Court Prosecutor during the period 1994 to 1996.
- 1.8 The candidate was the Regional Court Control Prosecutor during the period 1996 to 1997.
- 1.9 The candidate was employed as a Junior State Advocate during the period 1997 to 2000.
- 1.10 The candidate was employed as a Senior State Advocate during the period 2000 to 2003.
- 1.11 The candidate acted as part-time lecturer at the Faculty of Law: University of the Free State during the period June 2010 to December 2010 and June 2012 to December 2012.
- 1.12 The candidate acted as a Regional Court Magistrate during October 2007 and February 2008 and January 2012 to July 2012.
- 1.13 The candidate acted an Acting Judge in the Free State High Court from October 2015 to December 2015 and from February 2016 to March 2016.

CANDIDATE : MS MAREENA OPPERMAN

- 1.14 The candidate acted a Magistrate in the District Court: Domestic Violence from March 2016 to May 2017.
- 1.15 The candidate acted a Civil Magistrate in the District Court as from June 2017 to date hereof.
- 1.16 The candidate is appropriately qualified and has more than 33 years experience in practise.

2 Whether the candidate is a fit and proper person

- 2.1 The Magistrates Commission of the Republic of South Africa indicated that there are no pending disciplinary matters or investigations for any misconduct pending against the candidate while the International Association of Woman Judges also indicated that the candidate is a long standing member of the South African Chapter of the International Association of Woman Judges.
- 2.2 There is no information to hand to suggest that the candidate is not a fit and proper person.

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 woman.
- 3.2 The appointment of the candidate to the bench would help to ensure a racial and gender diversity which reflects the demographic profile of the Republic, as well as the Free State Province.

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

4.1 The candidate has more than thirty-three years experience as a Court Clerk, Article Clerk, Prosecutor, State Advocate, Magistrate, a Judge and a part-time Lecturer during which time she was exposed to a broad field of litigation including.

4.1.1 Criminal Law (60%);

4.1.2 Administrative Law; and

4.1.3 General Litigation, inclusive of Family Law, Contractual and Delictual matters (40%).

4.2 A brief synopsis of the most relevant and significant judgments in which the candidate was involved in is set out below:

4.3 *S v Kuylor* 2016 (2) SACR 563 (FB)

This case dealt with a discharge from prosecution in terms of section 204(2) of the Criminal Procedure Act 51 of 1977. The candidate concluded that the process to arrive at conclusion whether discharge should be given in terms of section 204(2) is *sui generis* proceedings which is separate from the main trial in as far as merits is concerned; that the enquiry is to be held after the conclusion of the main trial; the court must establish on a balance of probabilities whether the witness complied with the requirement to answer frankly and honestly all questions; that the test is subjective; the witness must be allowed to advance reasons and/or present evidence to justify his discharge from prosecution; the state has an interest in the enquiry and locus standi; the Court shall apply its mind to the evidence and

CANDIDATE : MS MAREENA OPPERMAN

give judgment and lastly that the ‘opinion’ or judicial decision will direct the outcome. The candidate granted an order in terms of which the witness was not discharged from prosecution.

- 4.4 *Diamond Blue Trading 505 BK t/a Just Water Bloemfontein v Cross Point Trading 311 (Pty) Ltd and Another* (1601/2015) [2015] ZAFSHC 217 (29 October 2015)

The judgment dealt with the rescission of a default judgment. The applicant erroneously relied on Rule 31(2)(d) for rescission. The judgment referred to and applied reported judgments of other Divisions and held that the judgment of the Free State Division on which the first respondent sought to rely was not applicable. The candidate concluded that the erroneous rule on which the application is based was not fatal and is salvaged by the substantive synonymy of the criteria applicable to Rule 31(5)(d). The judgment concluded that fairness dictates the indulgence of the court. Good cause was evaluated, the applicant was found to satisfy the criteria and the default judgment was rescinded.

- 4.5 *African Presbyterian Bafolisi Church of Southern Africa v Mkhwanazi and Others* (5833/2015) [2016] ZAFSHC 95 (31 March 2016)

The disputes in the main matter revolved around the proof of ownership or, even mere possession, and identifiability of the church buildings and property on which an interim interdict was founded. A further issue was the vagueness of the allegations of interference by the respondents with the property, activities and members of the

applicant. The result was purported to be a vague court order that is not executable and legally proper. The judgment dealt with a striking out application of alleged hearsay evidence and new evidence in the replying affidavit. The well-reasoned judgment dealt lucidly with the applicable principles and dismissed the striking out application. The court ultimately found that it was preferable that oral evidence be led to enable the court to see and hear the witnesses before coming to a conclusion. The Court thus exercised the discretion accorded to it where there were disputes of fact on the papers which could not be adjudicated on the papers. This Court made an order referring identified disputes for oral evidence to ensure a just and expeditious decision that will bring finality to the dispute.

4.6 *S v M and Others* (2/2016) [2016] ZAFSHC 41 (18 March 2016)

The judgment dealt with applications by the first and second accused persons in terms of section 174 of the Criminal Procedure Act 51 of 1977, which provides for the accused to be discharged at the end of the case for the prosecution if the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge. The charges against the accused were two counts of Housebreaking with the intent to contravene the provisions of section 3 of the Criminal Law Amendment Act 32 of 2007 and Rape and thirdly, Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977 (“CPA”). The judgment lucidly dealt with the applicable principles, applied relevant case law, including consideration of constitutional principles. The

CANDIDATE : MS MAREENA OPPERMAN

application for discharge in terms of section 174 of the Criminal Procedure Act 51 of 1977 by accused 1 was granted on Counts 1, 2 and 3 and the application for discharge in terms of section 174 of the Criminal Procedure Act 51 of 1977 by accused 2 was denied on Counts 1, 2 and 3.

4.7 *S v Chake* 2016 (2) SACR 309 (FB)

This judgment was not written by the candidate but rather by Judge Van Zyl and Acting Judge Murray after the candidate, in her capacity as Magistrate, took a decision to invoke section 280(2) of the Criminal Procedure Act and ordered that two sentences must run concurrently. The candidate submitted her decision to invoke section 280(2) of the Criminal Procedure Act by way of a special review in terms of section 304(4) of the Criminal Procedure Act.

The Judges agreed with the candidate's findings, conclusions and submissions and in particular that an earlier interpretation of section 280 of the Criminal Procedure Act, namely that only "trial court" had power to order concurrency of sentences, is incorrect.

1.1 It is noteworthy that during one of her acting stints as and Acting Judge, the candidate had a judgment reported namely *State v Kuyler* 2016 (2) SACR 563 FB, referred to above.

1.2 In light of the above we are of the view that the candidate has a good knowledge of the law generally and a good knowledge of Criminal Law in particular.

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

CANDIDATE : MS MAREENA OPPERMAN

5.1 The candidate is committed to the values of the Constitution. She has shown an awareness and commitment to democratic and fundamental human rights values as well as for social justice.

5.2 The judgments appended to the candidate's application evidence the candidate's commitment to the values that underlie a democratic and open society. In our opinion, the candidate is undoubtedly willing and able to give expression to the values of the Constitution, and to actively partake in the protection and development of core values that underlie the Constitutional disposition.

6 **Whether any judgments have been overturned on appeal**

6.1 *Road Accident Fund v Mphirime* (1036/2016) [2017] ZASCA 140 (2 October 2017)

This is the only judgment found by the reviewers which was written by the candidate while she was an Acting Judge and which was taken on appeal to the Supreme Court of Appeal. The order granted by the candidate was set aside and substituted with a new order.

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

7.1 As is evident from the candidate's *curriculum vitae* she has been exposed to various fields of the legal profession, especially criminal law, as a Court Clerk, Article Clerk, Prosecutor, State Advocate, Magistrate, Judge and a part time lecturer. As is evident from her *curriculum vitae* the candidate also attended to civil matters while she acted as a Judge and a Civil Court Magistrate and as such she also gained a substantial amount of experience in civil law.

CANDIDATE : MS MAREENA OPPERMAN

8 The candidate's linguistic and communication skills

- 8.1 The candidate has produced well-structured and clearly written judgments.
- 8.2 In Court as Acting Judge the candidate communicates well and clearly.

9 The candidate's ability to produce judgments promptly

- 9.1 There is no indication that the candidate has failed to deliver her judgments timeously.
- 9.2 No adverse comments were received.

10 The candidate's fairness and impartiality

- 10.1 It appears that the candidate is fair and impartial and applies the law without fear and favour.
- 10.2 No adverse comments have been received.

11 The candidate's independent mindedness

- 11.1 The Candidate appears to be independent minded as is evident from the judgment handed down in the matter between *Dirk Samuel Botha and Iveco South Africa* (Case Number A259/2014), where the candidate wrote a minority judgment dealing with costs. This occurred in circumstances where the candidate was an Acting Judge during 2015 presiding with two senior judges and serves as confirmation of her independent mindedness.
- 11.2 No adverse comments have been received.

CANDIDATE : MS MAREENA OPPERMAN

12 The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received.

13 The candidate's administrative ability

13.1 The candidate has a background as a Clerk, Article Clerk, Prosecutor, State Advocate, Magistrate, Acting Judge and part-time Lecturer and it is reasonable to assume that she has a good administrative ability.

13.2 No adverse comments have been received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments have been received.

15 The candidate's judicial temperament

15.1 No adverse comments have been received.

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

16.1 The candidate has shown a strong commitment to serve the community.

17 The candidate's potential

17.1 With the candidate's background, clear commitment and principled approach to the legal profession, we are of the view that the candidate has significant potential as a Judge.

CANDIDATE : MS MAREENA OPPERMAN

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

18.1 The candidate is a white women. Her appointment would enhance the gender composition of the bench and promote a demographic which was not well represented within the judiciary. Her appointment would demonstrate the changes that have occurred within our society seeing that she is a woman and it will convey the message that, with effort and commitment, achievements such as an appointment to the bench are now within reach of all South Africans regardless of gender or race.

CANDIDATE : MS MAREENA OPPERMAN

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

The State v Kuyler 2016 (2) SACR 563 (FB)

Unreported decisions

Samuel Botha and Iveco South Africa (Case Number A259/2014)

Diamond Blue Trading 505 BK t/a Just Water Bloemfontein v Cross Point Trading 311 (Pty) Ltd and Another (1601/2015) [2015] ZAFSHC 217 (29 October 2015)

African Presbyterian Bafolisi Church of Southern Africa v Mkhwanazi and Others (5833/2015) [2016] ZAFSHC 95 (31 March 2016)

S v M and Others (2/2016) [2016] ZAFSHC 41 (18 March 2016)

Mphirime v Road Accident Fund (916/2014) [2016] ZAFSHC 24

CANDIDATE : MS MAREENA OPPERMAN