

CANDIDATE: JUDGE CLIVE MICHAEL PLASKET

APPLICANT: JUDGE CLIVE MICHAEL PLASKET

**COURT FOR WHICH APPLICANT APPLIES: THE SUPREME COURT
OF APPEAL**

1 The candidate's appropriate qualifications

1.1 The applicant holds the following academic qualifications:

1.1.1 BA- 1981- [University of Kwa-Zulu Natal]

1.1.2 LLB- 1983- [University of Kwa-Zulu Natal]

1.1.3 LLM-1986- [University of Kwa-Zulu Natal]

1.1.4 PHD-2003- [Rhodes University- Judicial Review of
Administrative Action]

1.2 The candidate has worked in the following capacities in the legal field:

1.2.1 Admitted Attorney and Associate Partner at Cheadle Thomson
Haysom;

1.2.2 Director at the Legal Resources Centre;

1.2.3 Senior Lecturer in Law- Rhodes University;

1.2.4 Associate Professor- Rhodes University;

1.2.5 Honorary Visiting Professor- Rhodes University;

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1.2.6 Honorary Professor- Kwa-Zulu Natal University.

1.3 The candidate has served on 4 occasions as an Acting Judge of Appeal;

1.4 The reviewer considers the candidate eminently qualified for appointment to the Supreme Appeal Court.

2 Whether the candidate is a fit and proper person

2.1 There is nothing in the candidate's application or the judgments that have been considered that 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 man.

3.2 The Supreme Court of Appeal bench currently composes 22 Justices of Appeal, of whom 15 are men (5 white, 6 black, 3 Indian and 1 coloured) and 7 are women (5 black, 1 white and 1 Indian).

3.3 The appointment of the candidate would therefore not help to reflect the racial and gender composition of South Africa.

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

4.1 From the judgments reviewed, the candidate appears to possess an excellent knowledge of various areas of the law, including constitutional law.

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- 4.2 The judgments that have been reviewed also show that the candidate is able to consider and determine complex factual disputes and applies appropriate case law in his judgments.
- 4.3 The judgments reviewed reflect the candidate's knowledge in:
- 4.3.1 Delict;
 - 4.3.2 Contract;
 - 4.3.3 Customary law;
 - 4.3.4 Administrative Law: Review Applications and Tender matters;
 - 4.3.5 Interdicts;
 - 4.3.6 Criminal Law: Criminal Procedure Act, various crimes spanning rape, robbery, murder, unlawful possession of firearm, possession of narcotics and theft;
 - 4.3.7 Insurance Law;
 - 4.3.8 Interpretation of Statutes,
 - 4.3.9 The relationship between National and Provincial Legislation.
- 4.4 The candidate in appropriate cases sought to resolve legal issues before him by reference to the precepts of the Constitution.

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

5.1 The candidate's judgments demonstrate a deep understanding of the Constitution and displays a willingness to decide issues in accordance with constitutional imperatives.

6 Whether any judgments have been overturned on appeal

6.1 The candidate has listed in his applications those judgments that have been overturned on appeal, 6 in total.

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

7.1 The candidate appears to have extensive legal experience as appears from the areas of the law covered by the judgments reviewed.

7.2 The candidate has also been involved in either the teaching of law or the practice of law since 1984.

8 The candidate's linguistic and communication skills

8.1 The candidate's judgments are in English.

8.2 From the judgments reviewed, the candidate's judgments are clear and concise. Many of the judgments were fact and law intensive, yet, the candidate was able to deal with the issues before him logically and clearly.

8.3 No adverse comments regarding the candidate's linguistic or communication skills were received.

9 The candidate's ability to produce judgments promptly

9.1 The candidate produces judgments promptly.

10 The candidate's fairness and impartiality

10.1 The candidate's judgments reflect a fair and impartial mind that was brought to bear in respect of the matters before the candidate. In many of his judgments, the candidate clearly expressed each party's arguments and the candidate's view of the merits and demerits of the arguments presented.

10.2 No adverse comments were received regarding the candidate's fairness or impartiality.

11 The candidate's independent mindedness

11.1 The judgments reviewed reflect the candidate as independent-minded.

11.2 No adverse comments regarding the candidate's independence were received.

12 The candidate's ability to conduct court proceedings

12.1 The reviewer has not received any adverse comments regarding the candidate's ability to conduct court proceedings.

13 The candidate's administrative ability

13.1 The candidate's experience as a senior lecturer, a director at the Legal Resources Centre and an associate partner at a law firm – coupled with

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his ability to deliver well-reasoned judgments promptly – demonstrate that the candidate has strong administrative abilities.

14 The candidate’s reputation for integrity and ethical behaviour

14.1 No adverse comments have been received regarding the candidate’s integrity or ethical behaviour.

15 The candidate’s judicial temperament

15.1 The candidate appears to have an excellent judicial temperament.

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 displayed a profound commitment to human rights and has been sensitive to the needs of the community. This appears to have been a commitment that was present at the inception of the candidate’s legal career. The candidate has inter alia held the following positions:

16.1.1 Secretary for South African Lawyers for Human Rights [1983];

16.1.2 Chairman of the National Association for Democratic Lawyers-Johannesburg [1989];

16.1.3 Member of the Rural Legal Services Trust [1987];

16.1.4 Convenor of the Grahamstown Steering Committee for the transformation of the legal profession;

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16.2 The candidate since 1984 onwards was involved in the dispensing of advice to community organisations and to trade union leaders. The candidate in the eighties and in course of his employment was involved in a number of matters which dealt with political detainees and political issues that cropped up in rural areas.

[See the candidate's interview as part of the Legal Resources Centre Oral History Project- dated 2 September 2008]

17 The candidate's potential

17.1 The candidate holds a number of academic qualifications and has considerable experience which will undoubtedly add value to the work of the SCA.

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

18.1 As mentioned above, the candidate:

18.1.1 holds a number of academic qualifications;

18.1.2 has a wide range of experience and expertise in the legal field;
and

18.1.3 displays positive qualities of a judicial officer.

18.2 As mentioned by Judge Pickering, the candidate has constantly displayed ethical and moral behaviour and has been a "fearless fighter for human rights".

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

- 1 *The reviewers have considered the 10 reported cases listed in the candidate's application.*
- 2 *The reviewers have considered the 7 cases which were successfully appealed against.*

The reviewer have not considered all 98 of the reported judgments of the candidate.