

CANDIDATE: ADV JOHN HOLLAND-MÜTER

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COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION

1. The candidate's appropriate qualifications:

1.1. The candidate is duly qualified, having obtained;

1.1.1. B Iuris (University of Pretoria) during 1978; and

1.1.2. LLB (Unisa) during 1993.

1.2. The candidate is experienced, having worked as:

1.2.1. A clerk at the Department of Justice (1975 to 1978);

1.2.2. A prosecutor (1981 – 1982);

1.2.3. A magistrate (1982 – 1988);

1.2.4. A law lecturer at the Justice College (1988 – 1998); and

1.2.5. A practicing advocate as member of the Pretoria Bar (1998 to date).

2. Whether the candidate is a fit and proper person:

2.1. The candidate is a fit and proper person, because:

2.1.1. The Pretoria Society of Advocates issued a certificate of good standing in support of his application;

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- 2.1.2. The Pretoria Bar Council approved his application for Senior Status during 2018 and his applications was firstly forwarded to the Office of the Minister of Justice and thereafter to the Presidency;
- 2.1.3. He received a certificate for 20 years uninterrupted and dedicated service to the Public Service of South Africa;
- 2.1.4. There does not appear to be any:
- 2.1.4.1. Complaints or disciplinary proceedings pending against him in his professional capacity;
- 2.1.4.2. Criminal or civil litigation pending against him.
- 2.1.5. He was not only a member of the Pretoria Bar Council since 2010, but also participated in various sub-committees which aim to serve the advocacy and community as well as to promote transformation, as may gleaned from the candidate's:
- 2.1.5.1. Membership of the Pretoria Bar's training, pro bono work, membership, and transformation committees;
- 2.1.5.2. Representation of the Pretoria Bar on the Advocate;
- 2.1.5.3. Position as convenor of the Pretoria Bar's panel that interviews applicants from other Bars that apply for membership at the Pretoria Bar;
- 2.1.5.4. Participation in the Pretoria bar's welfare initiative, to wit the winter blanket project;

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2.1.5.5. Interviewing all pupils who apply for the GCB's bursary during pupillage during the last ten years; and

2.1.5.6. Development of a policy as to the factors to be considered in the granting of the bursaries with specific emphasis on transformation.

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 appointment of a white male candidate will not advance the cause of gender or racial representation.

4. The candidate's commitment to the values of the constitution:

4.1. The candidate is well-versed in the law, having lectured, practiced in different fields of the law and given judicially sound judgments as an acting judge.

4.2. There is no indication that the candidate is experienced in constitutional law.

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

5.1. The candidate is committed to the values of the Constitution, as it appears, among others, from his involvement in:

5.1.1. Transforming Laerskool Rietfontein-Noord from an Afrikaans medium school to a parallel medium school for

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- Afrikaans and English, paving the way for children from Eersterust and Mamelodi townships to enter school;
- 5.1.2. Engaging the parents from the Eersterust and Mamelodi communities in the school;
- 5.1.3. Procuring travelling for the children from these communities;
- 5.1.4. Assisting other School Governing Boards in the training on the South African Schools Act and governance;
- 5.1.5. Upliftment, housing and caring for abandoned children and orphans of all races;
- 5.2. The activities and subcommittees of the Pretoria Bar and his initiatives in regard thereto.

6. Whether any judgments have been overturned on appeal:

- 6.1. The candidate's only judgment that was overturned on appeal, is *Jenny Button (Pty) Ltd v Hyprop Investments Ltd* (GNP) Case Number 65643/2015, where the full bench of Gauteng Division, Pretoria, overturned the candidate's finding in an urgent application that the applicant had *locus standi*, on appeal.
- 6.2. This must be considered against the candidate's three judgments that were upheld on appeal, namely:
- 6.2.1. *Boutell v RAF* 2018 (5) SA 99 (SCA)
- 6.2.2. *Mothlaba v RAF* (Gauteng Division, Case Number: 12010/2014; and

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6.2.3. Kenosi v L Mofokeng & Others (GNP, Case Number: 50196/2016)

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

7.1. The candidate is a proficient lawyer, as may be garnered from:

7.1.1. His 30 year experience in the law, comprising:

7.1.1.1. 9 years as prosecutor, senior prosecutor, and magistrate (1981 – 1988);

7.1.1.2. 10 years as law lecturer at the Justice College, part time lecturer at Technikon South Africa and Unisa, and examiner at Technikon RSA; and

7.1.1.3. 11 years as practising advocate.

7.1.2. The various fields of law in which he lectured and practised, to wit mercantile law, private law, criminal law and civil litigation pertaining to professional negligence of attorneys, third party claims, contractual matters, insolvency, misconduct inquiries, unlawful arrests by the SAPS, arbitrations, construction law and family matters;

7.1.3. The fact that the Pretoria Bar supported his application for Silk.

8. The candidate's linguistic and communication skills:

8.1. The candidate is proficient in the English language and communication skills, as is apparent from:

8.1.1. The fact that he was a lecturer;

8.1.2. His well-defined and accessible judgments;

8.1.3. The manner in which he drafted his submission in support of his nomination.

9. The candidate's ability to produce judgments promptly:

9.1. The candidate is able to produce judgments promptly.

9.2. The candidate has held acting appointments for 45 weeks between 2015 and 12 July 2019, and there is not a single judgment outstanding.

10. The candidate's fairness and impartiality:

10.1. There are no reservations or concerns regarding the candidate's impartiality and fairness.

11. The candidate's independent mindedness:

11.1. There are no reservations or concerns regarding the candidate's independent mindedness.

12. The candidate's ability to conduct court proceedings:

12.1.

13. The candidate's administrative ability:

13.1. The candidate is administratively proficient, as may be gleaned from his career record, involvement in Bar Council matters and his parish's personnel management.

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

14.1. The candidate's integrity and ethical behaviour are incontrovertible.

15. The candidate's judicial temperament:

15.1. The candidate's integrity is undisputable, having regard to his appointment as magistrate and acting judge for prolonged periods.

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

16.1. The candidate's commitment to human rights, and experience regarding the values and needs of the community, appear from his involvement in the activities and subcommittees previously mentioned.

17. The candidate's potential:

17.1. The candidate demonstrates potential to contribute to the judiciary, having regard to his experience, capabilities, and demeanour.

17.2. The candidate's age, to wit 63 years, may inhibit his ability to reach his full potential before reaching retirement age.

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

1.1. The candidate's appointment would not contribute to the project to transform the judiciary.

18.1. If the candidate is appointed, it will convey to the community at large that the judiciary:

18.1.1. Consists of judges that are competent, experienced, proficient, fair and just, and open minded; and

18.1.2. Judges are involved in and understands the needs of the community.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Although the candidate's judgment in *Boutell v RAF* (Gauteng Division, Pretoria, Case Number: 55458/2014) itself was not reported, the confirmation on appeal was reported as *Boutell v RAF* 2018 (5) SA 99 (SCA).

GJ Tsotetsi v RAF (Gauteng Division, Pretoria, Case Number: 7510/2013), reported on SAFLII as [2016] ZAGPPHC 463

Unreported Decision

Cloete Murray N.O. & Others v Moureau & Another (Gauteng Division, Pretoria, Case Number: 13377/2013);

Big Eye Investment 210 (Pty) Ltd v Gert Tack Staal Konstruksie CC Gauteng Division, Pretoria, Case Number 30627/2014).

Judgments upheld on appeal:

Boutell v RAF 2018 (5) SA 99 (SCA) *Boutell v RAF* (Gauteng Division, Pretoria, Case Number: 55458/2014)

Judgments overturned on appeal:

Jenny Button (Pty) Ltd v Hyprop Investments Ltd (Gauteng North, Pretoria, Case Number 65643/2015) was not considered

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