

CANDIDATE: ADV. DEIDRÉ SUSAN KUSEVITSKY

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**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
DIVISION**

1. The candidate's appropriate qualifications:

- 1.1. LLB (University of the Western Cape) 2002.
- 1.2. LLM (University of the Western Cape) 2005.
- 1.3. Certificate in Medical Negligence Law (University of Cape Town) 2012.
- 1.4. Certificate in Mediation (London School of Mediation) 2013.
- 1.5. Certificate in Arbitration (The Arbitration Foundation of South Africa) 2015.
- 1.6. Certificate: Introduction to Corporate Governance (Institute of Directors Southern Africa) 2015.
- 1.7. The candidate is appropriately qualified.

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

- 2.1. The candidate has served in the legal profession as a candidate attorney from 2001 to 2003, as an attorney during 2003, and as an advocate in private practice from 2003 until the present.

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2.2. The candidate was an acting judge of the Western Cape Division from 17 April 2017 to 30 June 2017, 31 July 2017 to 22 September 2017, 3 October 2017 to 15 December 2017, 29 January 2018 to 30 March 2018, 16 April 2018 to 28 June 2018 and 30 July 2018 to 21 September 2018.

2.3. She also served as in-house legal assistant for the Standard Bank of South Africa from 1996 to 2000.

2.4. We are not aware of any professional complaints made against the candidate.

2.5. The candidate is known to members of the profession as a person of integrity.

2.6. There is accordingly 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 black woman of "coloured" descent.

3.2. The appointment of the candidate would assist in reflecting the racial and gender composition of South Africa.

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

4.1. There is no reason to doubt the candidate's commitment to the values of the Constitution.

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

- 5.1. The candidate is known to members of the profession as an experienced lawyer with a good knowledge of the law, particularly personal injury and medical negligence law.
- 5.2. The candidate has experience in numerous areas of the law, particularly criminal, banking and insurance law, delictual and personal injury law and constitutional law.
- 5.3. The candidate acted as one of the evidence leaders in the Claasen Commission of Inquiry, which focused on the conduct of the leaders of the South African Police Service during the Marikana Massacre.
- 5.4. The candidate has also been a member of various disciplinary committees for the Cape Bar Council.
- 5.5. The candidate has appeared in two reported cases.

6. Whether any judgments have been overturned on appeal:

- 6.1. As an acting judge the candidate made an order that the liquidators in an insolvent estate pay costs de bonis propriis. The cost order was set aside on appeal.

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

7.1. The candidate was a candidate attorney from 2001 to 2003, an attorney during 2003, and an advocate in private practice from 2003 until the present.

7.2. Her practice as an advocate has exposed her to various areas of the law.

8. The candidate's linguistic and communication skills:

8.1. The candidate has excellent linguistic and communication skills in English.

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

9.1. Whilst an acting judge, the candidate has produced her judgments promptly.

10. The candidate's fairness and impartiality:

10.1. We are not aware of any complaints that have been made pertaining to the candidate's fairness and impartiality, and have no reason to question these aspects.

10.2. Members' experience of dealing with the candidate during her stints as an acting judge is consistent with the above.

11. The candidate's independent-mindedness:

11.1. We are not aware of any complaints that have been made pertaining to the candidate's independent mindedness.

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

12.1. In her time as an acting judge, members experienced the candidate as a competent judicial officer, well-prepared for the cases brought before her. She has conducted Court proceedings diligently, efficiently, impartially and courteously.

13. The candidate's administrative ability:

13.1. The profession cannot comment on the candidate's administrative ability in her capacity as an acting judge.

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

14.1. Members consider the candidate to have integrity and sound ethics. No complaints or queries about her ethical standards or integrity have been received.

15. The candidate's judicial temperament:

15.1. The candidate has an even and constructive 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 is currently, and has for the past two years been, the chairperson of the Women's Hope Education and Training Trust (WHEAT). She served as a Trustee of WHEAT for approximately two years prior to being appointed chairperson. WHEAT is a twenty year old registered grant-making organization. It was established in order to advance the lives of woman in post-Apartheid South Africa. It has

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established a grantee base and has funded and co-funded more than 1300 projects.

17. The candidate's potential:

17.1. The candidate's performance as an acting judge of the High Court demonstrates that she has the potential to be a good judge.

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

18.1. The candidate is a black woman and her appointment will send a positive message to the community at large.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

South African Bank of Athens Ltd v Zennies Fresh Fruit CC 2018 (3) SA 278 (WCC)

Unreported decisions

Swanepoel and Others v Swanepoel (18211/2017) [2017] ZAWCHC 154 (13 December 2017)

R v S (A760/17) [2018] ZAWCHC 122 (18 September 2018)

Nels Investments CC v Bellinghan (7048/2018) [2018] ZAWCHC 142 (31 October 2018)

Westerhuis v Whittaker and Others (4145/2017) [2018] ZAWCHC 76 (26 April 2018)

S v Van der Merwe (63/2017) [2017] ZAWCHC 127 (20 September 2017)

Secure Electronics v City of Cape Town (24107/2012) [2017] ZAWCHC 95 (13 September 2017)

Clarke v MEC for Health Western Cape and Another (13724/14) [2018] ZAWCHC 64 (8 March 2018)

Lateral Dynamics (Pty) Ltd v Wonga Finance SA (Pty) Ltd and Others (12808/2017) [2018] ZAWCHC 14 (24 January 2018)

Absa Bank Limited v Metropolitan Construction & Site Managing Consultants CC and Another (1143/2017) [2017] ZAWCHC 168 (23 May 2017)

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Jocastro (Pty) Ltd v Ekurhuleni Metropolitan Municipality and Others; Jocastro (Pty) Ltd v Ekurhuleni Metropolitan Municipality and Another (9466/2017) [2018] ZAWCHC 44 (11 April 2018)

Judgments upheld on appeal

N/A.

Judgments overturned on appeal

Yes. Only in relation to an order the candidate made in *Zennies* that the liquidators in an insolvent company pay costs de bonis propriis. The cost order was set aside on appeal.