

CANDIDATE: MR ANTHONY PETER MILLAR

CANDIDATE: JUDGE ANTHONY PETER MILLAR

**COURT FOR WHICH APPLICANT APPLIES: GAUTENG DIVISION OF
THE HIGH COURT**

1 The candidate's appropriate qualifications:

1.1 The candidate has the following degrees and qualification:

1.1.1 BA (University of the Witwatersrand 1989), and

1.1.2 LLB (University of the Witwatersrand 1992).

2 Whether the candidate is a fit and proper person:

2.1 There is nothing in the candidate's application or to our knowledge suggesting that he is not a fit and proper person.

2.2 A review of his judgments and information in the public domain provides no indication that he is unfit for the position applied for.

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.

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3.3 As the candidate is currently 59 years old, section 3(2) of the Judge's Remuneration and Condition of Employment Act 47 of 2011 is not a real consideration presently.

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

4.1 The candidate does not expressly state his commitment to the values of the Constitution. However, he shows a commitment to transformation and access to justice in that:

4.1.1 The candidate has been a member of the Black Lawyers Association since 1999 to 2015.

4.1.2 The candidate pursued the eradication of the use and abuse of Contingency Fee Agreements, and was instrumental in calling for the first proper Council Election of the Law Society of the Northern Provinces.

4.2 We were unable to find a judgment where the candidate directly deals with matters of Constitutional import, it is therefore difficult to discern whether the candidate is fully conversant in this area of law.

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

5.1 The candidate's experience in law is highly concentrated in the area of Road Accident Fund matters and ancillary aspects arising there from, with more limited experience in other areas of law.

5.2 This being said; his judgments do reflect an understanding of procedure and substantive law. The majority of the candidate's judgments do not

deal with issues that are novel and/or highly complex, it is therefore difficult to fairly assess the candidate's ability for astute reasoning.

6 Whether any judgments have been overturned on appeal:

6.1 We could not find any of the candidate's judgments that have been overturned on appeal.

6.2 It does bare mention that the majority of the candidate's judgments have been marked "not reportable" and "not to interest of other judges".

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

7.1 The candidate has by virtue of his experience as an attorney for 24 years, together with several short acting stints totalling 36 weeks, sufficient knowledge of the legal profession, procedure and the law.

7.2 However, as stated earlier the candidate's judgments reflect a limited exposure to all areas of law, with basically no exposure to criminal law – the candidate has only presided over criminal appeals.

8 The candidate's linguistic and communication skills:

8.1 The candidate appears to have an affinity to writing short judgments and his judgments have seldom been replete with repetition.

8.2 While the candidate's experience in RAF matters, where his judgments show sound reasoning, his judgments in other areas of law at times lack the same quality of reasoning.

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8.3 This being said, generally the candidate arrives at the correct conclusion.

8.4 The writing style does allow for easy reading, as the candidate utilises paragraphs and he attempts to analyse and explain the relevance of authorities referred to.

9 The candidate's ability to produce judgments promptly:

9.1 The candidate states that he has no outstanding judgments.

9.2 The judgments reviewed indicate that his judgments were given promptly within couple of days after the hearing of the matter. None of the judgments that were reviewed indicated an inordinate delay.

10 The candidate's fairness and impartiality:

10.1 We could find no adverse indication to impugn the candidate's fairness and impartiality.

10.2 In the matter of *Ex Parte: Goosen and Others* (2019/2137) [2019] ZAGPJHC 154; [2019] 3 All SA 161 (GJ) (17 May 2019), the candidate sitting as a full court with Sutherland and Modiba JJ, which matter regarded the proper interpretation of a point of law, ie the effect of the Legal Practice Act on admissions of legal practitioners.

10.3 As a preliminary issue the court had to deal with a recusal application brought by an amicus against Millar AJ founded on his membership of the Legal Practice Counsel.

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10.4 The recusal application was dismissed, and the court inter alia found that an amicus does not have standing to bring a recusal application.

10.5 Moreover, the court found that there could be no reasonable apprehension of bias on the part of Millar AJ.

11 The candidate's independent mindedness:

11.1 No adverse comments have been received.

12 The candidate's ability to conduct court proceedings:

12.1 The candidate has 24 years of experience as a practicing attorney and has acted as judge cumulatively for 36 weeks.

12.2 His judgments reflect a good understanding of the rules of court, evidential rules and a commitment to procedural fairness.

13 The candidate's administrative ability:

13.1 There is no reason to believe that the candidate does not have the necessary administrative ability.

13.2 He has held various positions within the Law Society, LPC and their sub-committees:

13.2.1 He was appointed as president of the Law Society of the Northern Provinces (November 2015 to January 2017);

13.2.2 Member of the Management Committee of the Law Society of the Northern Provinces (2015 – 2016);

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- 13.2.3 Member of the Finances and Human Resources Committee of the Law Society of the Northern Provinces (2015 to January 2017);
- 13.2.4 Member of the Council of the Law Society of South Africa (2016 to March 2019);
- 13.2.5 Appointed to the Board of the Attorneys' Fidelity Fund (2016 to October 2018);
- 13.2.6 Member of the Transformation Committee of the Law Society of the Northern Provinces (2016 to October 2018);
- 13.2.7 Member of the Contingency Fees Committee of the Law Society of the Northern Provinces (2016 to March 2018);
- 13.2.8 Chair and member of the Contingency Fees Tribunal (2016 to present);
- 13.2.9 Member of the Legal Practice Council (November 2018 to present).

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

- 14.1 No adverse information has been received which casts doubt on the candidate's integrity and ethical behaviour.

15 The candidate's judicial temperament:

- 15.1 No adverse comments were received concerning the candidate's temperament and conduct in court.

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15.2 There is no reason to believe that the candidate does not have an even judicial temperament.

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

16.1 Notwithstanding the candidate's limited exposure to matters involving constitutional law and values, his involvement in ensuring fairness of contingency fee agreements indicates a commitment to constitutional principles and access to justice.

17 The candidate's potential:

17.1 No adverse information was received which would call into question the candidate's potential.

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

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

18.2 To the extent that there is an inclination to appoint a white man, progressive thinking white men who demonstrate a commitment to transformation should be preferred.

18.3 The candidate's involvement in the various committees within the Law Society of the Northern Provinces and Legal Practice Council reflects a broader public interest commitment.

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18.4 From this limited perspective, his appointment would send a positive message to the community.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Ex Parte: Goosen and Others 3 All SA 161 (GJ) (17 May 2019);

LDB v Road Accident Fund 2018 JDR 0112 (GP);

South African Board for Sheriffs v Cibe 2018 JDR 2153 (GJ);

Dredging Africa (Pty) Ltd v Master Chemicals South Africa (Pty) Ltd 2019 JDR
0584

Unreported Judgments

Brouwer N.O v Road Accident Fund (22517/2012) [2019] ZAGPPHC 21 (4
February 2019)

De Bruyn vs RAF (14606/2016) [full citation not available]

Pretorius v Road Accident Fund (80333/2015) [2019] ZAGPPHC 17 (4 February
2019)

*South African Arms and Ammunition Dealers' Association v National Commissioner
of the South African Police Services and Others* (38807/2019) [2019]
ZAGPPHC 291 (11 July 2019)

M v Road Accident Fund (22100/2012) [2019] ZAGPPHC 5 (31 January
2019)

Smith v The Financial Services Board and Another (9046/2018) [2019] ZAGPPHC
83 (20 March 2019)

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JR209 Investments (Pty) Ltd and Others v Homeless People Housing Cooperative Limited and Others (24505/2019) [2019] ZAGPPHC 290 (11 July 2019)

Mere v Mere and Others (22159/2017) [2019] ZAGPPHC 90 (26 March 2019)

Prusent v Road Accident Fund (3033/2017) [2019] ZAGPPHC 15 (5 February 2019)

Draht N.O and Others v Manqele and Others (29501/2014) [2019] ZAGPPHC 288 (11 July 2019)