

**APPLICANT: MS SHARON MARGARET MARKS**

**COURT FOR WHICH APPLICANT APPLIES: KWA-ZULU NATAL  
DIVISION OF THE HIGH COURT, DURBAN AND  
PIETERMARITZBURG**

**1. The candidate's appropriate qualifications**

1.1. The candidate holds the following degrees:

1.1.1. Bachelor of Arts Degree (1979), University of KwaZulu-Natal;

1.1.2. LLB Degree 1982, University of KwaZulu-Natal;

1.1.3. Diploma in Advanced International Programme on Human Rights, University of Pretoria, Lund University Sweden ;

1.2. The candidate is a Regional Court Magistrate, stationed at Durban, KwaZulu-Natal.

1.3. The candidate is appropriately qualified.

1.4. The candidate's career path.

**LEGAL**

1.5. July 1983 – April 1986 – Public Prosecutor;

1.6. 1985 - Acting Senior Public Prosecutor;

1.7. May 1986-April 1992 - Additional Magistrate Verulam;

1.8. August - December 1991- Acting Regional Court Magistrate -Durban;

- 1.9. May 1992 to date- Regional Court Magistrate;
- 1.10. February 2005 (1 month) - Assessor High Scottsburg and Durban;
- 1.11. February 2006 (1 month) - Assessor High Scottsburg and Durban;
- 1.12. May 2006 (1 month) - Assessor High Scottsburg and Durban;
- 1.13. May-August 2007- Acting Regional Court President;
- 1.14. March 2011- Acting Regional Court President;
- 1.15. April 2012- Acting Regional Court President;
- 1.16. June 2013- Acting Regional Court President;
- 1.17. July 2013 –September 2013- Acting Regional Court President;
- 1.18. December 2016-January 2017- Acting Regional Court President;
- 1.19. October 2018 to date - Acting Regional Court President;
- 1.20. 30 July 2012-31 August 2012-Acting Judge of the High Court;
- 1.21. 15 October 2012 -16 November 2012-Acting Judge of the High Court;
- 1.22. 19 November 2012 -16 December 2012-Acting Judge of the High Court;
- 1.23. 3 March 2012-28 March 2014-Acting Judge of the High Court;
- 1.24. 28 July 2014 -24 August 2014-Acting Judge of the High Court;
- 1.25. 24 August 2015 -18 September 2015-Acting Judge of the High Court;

- 1.26. October 2015-6 November 2015-Acting Judge of the High Court;
- 1.27. 9 November 2015-11 December 2015-Acting Judge of the High Court;
- 1.28. 25 January 2016-26 February 2016-Acting Judge of the High Court;
- 1.29. 31 July 2017-22 September 2017-Acting Judge of the High Court;
- 1.30. 5 March 2018-20 May 2018-Acting Judge of the High Court;
- 1.31. 20 May 2019-30 June 2019- Acting Judge of the High Court;
- 1.32. Former member JOASA (Judicial Officers Association of SA);
- 1.33. Present member of ARMSA (Association of Regional Magistrates of South Africa);
- 1.34. Executive member, National Treasurer - ARMSA (2004-2005);
- 1.35. Secretary of ARMSA – Salaries and Services Committee (2002-2005);
- 1.36. Member of the Case Flow Committee- Durban (2004 to date);
- 1.37. Member of Council, KZN IAWJ (International Association of Women Judges) the SA Chapter (2004-2006);
- 1.38. Member of Programs Committee- IAWJ (2004-2006);
- 1.39. Member of the Case Flow Management Monitoring Committee (REEC)- KZN (2007 to date);
- 1.40. Member of Provincial Integrated Justice Forum (PIJF) (PEEC) (2007 to date);

- 1.41. Appointed official mentor for the Regional Magistrates by the Ministry of Justice (2002).

## **NON – LEGAL**

- 1.42. School Governing Body –Northlands Girls High School (2009-2013);
- 1.43. Chairperson of the Discipline Committee of the Governing Body at Northlands Girls High School (2009-2013);
- 1.44. KZN Baseball Association 2009-2013;
- 1.45. Hilltop Homeowners Association 2009-2014;
- 1.46. Judge in Moot Court Finals at Varsity College.

## **2. Whether the candidate is a fit and proper person**

- 2.1. The candidate began her employment with the Department of Justice in 1983 as a Public Prosecutor. She was appointed as a Regional Court Magistrate with effect from May 1992. She is currently serving as an Acting Regional Court President in KZN.
- 2.2. The Association of Regional Magistrates of Southern Africa and the Magistrates Commission has issued a letter of good standing for the candidate; and
- 2.3. There is no reason to doubt that the candidate is 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 candidate's appointment would help to transform the gender composition of the bench but not the racial composition.

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

4.1. The candidate has listed six reported judgments, as an Acting Judge.

4.2. The candidate has no reserved judgments that are still outstanding.

4.3. The candidate listed the following reported judgments as among her most significant judgments:

4.3.1. *S v Essop* 2014 (2) SACR 495;

4.3.2. *National Minister Co-op Gov and Traditional Affairs and another v Ethekwini Municipality* (96957/2010) (2014)6.10.14;

4.3.3. *P A Pearson (PTY) Ltd v Ethikwini* 2016 (4) SA 218.

4.4. The candidate has acted as a Judge from 2012 and has a total of 13 stints as an Acting Judge.

4.5. The candidate is currently employed as a Regional Magistrate and has been employed as such for 33 years. She has adjudicated in both civil and criminal matters.

4.6. The candidate's experience (particularly as a magistrate) and her judgments in the High Court suggest that she has a good knowledge of

the law. Concerns have been raised by members of the bar, however, that the candidate does not possess adequate experience in respect of civil matters and that she should act further on the civil Bench before being considered for appointment.

## **5. The candidate's commitment to the values of the Constitution**

5.1. The candidate has contributed to transformation of the Judiciary in respect of gender transformation in the Regional Court. As Acting Regional Court President in 2007, the candidate was responsible for initiating capacity building for women. She is a Mentor for Regional Magistrates.

5.2. In 2007, the candidate opened the second Child Abuse Court in Durban to deal with the backlog cases of children who had been victims of child abuse.

5.3. As Acting Regional Court President, the candidate chaired the backlog subcommittee of the PEEC.

5.4. There is nothing in the judgments of the candidate or in any publicly available information which suggests that the candidate is not committed to the values of the Constitution.

5.5. It is notable that the candidate appears to make a concerted effort to deliver her judgments timeously. The judgments considered during this review were delivered within a matter of weeks.

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

6.1. The candidate lists one judgment that was taken on appeal: *PA Perason (property) Limited v Ethekewini Municipality* Case No. (241/2016) 2017 ZASCA 63 (29 May 2017). The appeal was dismissed.

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

7.1. As appears from the candidate's CV, she has approximately 33 years' experience on the bench in the Magistrates Court. The candidate is also a member of ARMSA and KZN IAWJ. She is the member of the Case Flow Management Monitoring Committee. She is currently acting as the Regional Court President of the KwaZulu-Natal Regional Division.

7.2. She is a member of the Judicial Appointments Committee, both at provincial level and the Magistrates Commission. The candidate mentioned that she together with a colleague formed the Gender Building Forum, which resolved that female magistrates would be afforded an opportunity to act in managerial capacities and also on the Regional Court bench. Her participation in these organisations demonstrates an interest in the judiciary and its racial and gender transformation.

7.3. The candidate has, in her capacity as official mentor for Regional Magistrates, trained, assisted and mentored many of the magistrates who have acted on the Regional Court Bench.

## 8. **The candidate's linguistic and communication skills**

8.1. From the candidate's judgments it is clear that she has excellent English language skills. The candidate uses plain language in her judgments, making them easily understandable.

8.2. The candidate's judgments are clear and can be easily understood by a wide variety of readers, even in circumstances where she is communicating complex concepts.

8.3. Her proficiency in other languages is unknown.

8.4. No adverse comments have been raised about the candidate's communication skills.

## **9. The candidate's ability to produce judgments promptly**

9.1. There is no indication, from the judgments analysed, that the candidate has failed to deliver any judgment within a few months.

## **10. The candidate's fairness and impartiality**

10.1. No adverse comments have been received.

10.2. The analysis of the candidate's judgments set out above indicates that the candidate carries out her role with the fairness and impartiality it requires.

## **11. The candidate's independent mindedness**

11.1. No adverse comments have been received.

11.2. The analysis of the candidate's judgments set out above indicates that the candidate has an independent mind.

## **12. The candidate's ability to conduct court proceedings**

12.1. There is nothing to indicate that the candidate is unable to conduct court proceedings efficiently. No adverse comments have been received.



12.2. Having been a Regional Magistrate since 1992, the candidate can be expected to have developed the skills to conduct court proceedings.

12.3. There is nothing to indicate that the candidate is unable to conduct court proceedings efficiently. No adverse comments have been received.

**13. The candidate's administrative ability**

13.1. The candidate displays good administrative ability displayed especially in the delivery of prompt judgments.

13.2. No adverse comments have been received regarding the candidate's administrative ability.

**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 unfavourable 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. As Acting Regional Court President, the candidate has organised lectures for all members of the lower court judiciary, KwaZulu-Natal.

16.2. She has addressed the 13th International Congress on Child Abuse and Neglect, held in Durban from 3-6 September 2000.

16.3. The candidate has been involved in numerous Outreach Programmes involving women, children and other vulnerable groups.

- 16.4. The candidate as a member of ARMSA has also assisted Salaries and Service Committee ARMSA in drafting part of the proposals and Executive Summary placed before the Independent Remuneration Committee.
- 16.5. The candidate has organised and facilitated lectures for the lower Court Judiciary Durban
- 16.6. She addressed the 13th International Congress on Child Abuse and Neglect.
- 16.7. She addressed the Lower Court Judiciary on various topics.
- 16.8. As Provincial Co-ordinator for the IAWJ and the candidate's membership of ARMSA she has together with other relevant bodies organised and participated in various outreach programs targeting especially vulnerable groups of women and children.

**17. The candidate's potential**

- 17.1. The candidate at over 33 years of experience has the potential to bring a wealth of experience to the bench.

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

- 18.1. The candidate's appointment will send a positive message to the community at large, especially in light of her efficiency in delivering judgments and the greater representivity of women on the bench.

18.2. The candidate would, however, benefit from further experience in civil matters prior to an appointment.