

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ADV CHERYL STEPHANIE ANTONIA SMART

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL
LOCAL DIVISION OF THE HIGH COURT, DURBAN**

**1. The candidate's tertiary qualifications, professional admissions,
honours, and permanent judicial appointments:**

1.1. The candidate is appropriately qualified.

1.2. The candidate holds the following qualifications:

1.2.1. University of South Africa – BA 1985;

1.2.2. University of Natal Durban – LLB 1989; and

1.2.3. University of KwaZulu-Natal – Post Graduate Diploma in
Environmental law 2003.

1.3. The candidate holds the following professional memberships:

1.3.1. Society of Advocates – member 1996 to present;

1.3.2. Environmental Law Association – member 2000 to present;
and

1.3.3. Advocates for Transformation – member 2018 to present.

2. The candidate's integrity and ethics:

2.1. There are no known circumstances that would suggest that the candidate is not a person of integrity or is not a fit and proper person for appointment.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently 28 judges permanently appointed to the KwaZulu-Natal Division of the High Court. Based on the names listed on the judiciary's website, the KwaZulu-Natal Division's racial and gender composition appears to be:

3.1.1. 10 black women (5 African, 4 Indian, 1 coloured);

3.1.2. 1 white woman;

3.1.3. 11 black men (6 African, 3 Indian, 2 coloured); and

3.1.4. 6 white men.

3.2. There are currently 14 judges permanently appointed to the KwaZulu-Natal Division of the High Court in Durban. Based on the names listed on the judiciary's website, the Division's racial and gender composition in Durban appears to be:

3.2.1. 4 black women (3 African, 1 Indian);

3.2.2. 5 black men (3 African, 2 Indian); and

3.2.3. 5 white men.

3.3. The candidate is a white woman.

4. The maximum time period the candidate could serve if appointed:

4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges “*hold office until they are discharged from active service in terms of an Act of Parliament.*” The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years’ active service.

4.4. The candidate turned 63 on 25 August 2023.

4.5. If appointed, the candidate could serve up to 12 years actively in office.

5. The candidate’s personal commitment to the values of the constitution:

5.1. The candidate has served as the convenor of the KwaZulu-Natal Society of Advocates *Pro Bono* Sub-Committee since 2019 and continues to oversee the allocation of numerous matters to counsel on a *pro bono* basis. Under her guidance, the sub-committee has developed an updated set of rules and guidelines which, if adopted,

will facilitate the ease of access to *pro bono* counsel for the public in line with the requirements of the Legal Practice Act, 2014.

- 5.2. The candidate has mentored three pupil advocates, one of whom is now a senior counsel.
- 5.3. The candidate has been involved in pupil mentor training since 2011.
- 5.4. The candidate's personal commitment to the values of the Constitution is evident from the manner in which she interacts with practitioners, litigants, and witnesses.
- 5.5. The candidate is a member of professional societies which demonstrate a commitment to society and the values enshrined in the Constitution.

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

- 6.1. The candidate has a broad range of knowledge of law as a result of her background, which includes practising as an advocate for more than 27 years and acting as a judge in the KwaZulu-Natal Division of the High Court.
- 6.2. The candidate has acted in the KwaZulu-Natal Division for more than 28 weeks between 15 April 2019 and 15 June 2023.

7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal:

- 7.1. No known judgments have been taken on appeal.

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

- 8.1. The candidate has diverse legal experience:

- 8.1.1. the candidate has been in practice as an advocate for 27 years;
- 8.1.2. she was a commissioner of the Small Claims Court for five years; and
- 8.1.3. she has acted in the KwaZulu-Natal Division for a period of 28 weeks.

9. The candidate's linguistic and communication skills:

- 9.1. The candidate is well spoken. Her linguistic and communication skills are good.
- 9.2. The candidate's judgments are written in clear and concise language and address the issues of fact and principles of law in a logical and well-reasoned manner.

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

- 10.1. In the candidate's questionnaire, dated 19 June 2023, she disclosed that she had two outstanding reserved judgments, one from 23 February 2023 and the other from 12 December 2022. This is an extended period of time.
- 10.2. Three of the candidate's judgments attached to her application were handed down more than three months after the date of hearing.

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively:

- 11.1. No adverse comments were received in respect of the candidate's fairness and impartiality. She is perceived to act and administer the law without fear, favour, or prejudice.

11.2. The candidate has demonstrated her ability to conduct court proceedings fairly, efficiently, and effectively during her acting stints.

12. The candidate's independent mindedness:

12.1. The candidate is independent minded. This is clearly established by her conduct in court and in her judgments.

12.2. No adverse comments were received in respect of the candidate's independent mindedness.

13. The candidate's administrative ability (other than in relation to court proceedings):

13.1. The candidate's legal experience illustrates that not only does she have a thorough knowledge of the law and practice, but that she also has excellent communication skills, managerial skills, as well as administrative skills from having served as the convenor of the *Pro Bono* Sub-Committee for the Society of Advocates KwaZulu-Natal.

14. The message that the candidate's appointment would send to the public at large:

14.1. The candidate's appointment to the KwaZulu-Natal Division of the High Court will send a message to the public that the judiciary is committed to gender transformation, especially in view of the fact that only one white woman has been appointed to the division.

14.2. The candidate displays good ability as a legal practitioner and administrator of justice, and this would demonstrate to the community that the judiciary is committed to preserving its high standard of competence and expertise.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:
 - 1.1. None
2. Unreported judgments:
 - 2.1. *SO Mabizela v The State*, AR 121/2018, Appeal judgment sitting with Judge E Steyn
 - 2.2. *Lucia De Almeida v S Mooiappa and Others*, case no: 6387/2018, delivered on 13 September 2019
 - 2.3. *DA Knott v RZT Zeply (Pty) Ltd*, case no: D703/2020, delivered 22 February 2023
 - 2.4. *MI Zulu and Others v Provincial Executive Committee, ANC, Kwa-Zulu-Natal*, case no: 189/2022P
 - 2.5. *NF Nxumalo v The State*, AR 101/2022, delivered 9 June 2023, appeal judgment candidate sitting with Vahed J
 - 2.6. *Branley Interiors CC and Another v Adprops SA (Pty) Ltd*, case no: AR139/2022, Appeal with Steyn J, delivered on 2 June 2023
3. Judgments upheld on appeal:
 - 3.1. None
4. Judgments overturned on appeal:
 - 4.1. None