

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, WESTERN CAPE DIVISION OF THE HIGH COURT

ADVOCATE MELANIE HOLDERNESS

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

1.1. The candidate holds the following tertiary qualifications:

1.1.1. BA (Arts), Rhodes University (1996)

1.1.2. LLB, Rhodes University (1998)

1.1.3. MBA, University of Cape Town Graduate School of Business (2002).

1.2. The candidate holds the following professional admissions and honours:

1.2.1. admitted as an Attorney of the High Court in 1999

1.2.2. admitted as an Advocate of the High Court on 3 September 2003.

2. The candidate's integrity and ethics

2.1. No circumstances are known to the reviewers which suggest that the candidate is not a person of integrity or who is not a fit and proper person for appointment.

3. The racial and gender composition on the bench

1.1. As far as could be ascertained, there are 27 permanent judges of the Western Cape Division of the High Court:

1.1.1. 10 black women (4 African, 6 Coloured)

1.1.2. 12 black men (5 African, 5 Coloured, 2 Indian)

1.1.3. 2 white women

1.1.4. 3 white men

3.1. According to the questionnaire, the candidate is a white woman.

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 49 years and 9 months old and will have completed a period of approximately 1 year and 2 months of service as an acting judge.
- 4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 20 years and 3 months until the age of 70.

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

- 5.1. In her *curriculum vitae*, the candidate indicates that in her 20 years of practice at the bar she has remained an independent professional who was not beholden to anyone.
- 5.2. The candidate provides pupil training and tutoring and was previously a member of the bar's Advocacy Training Committee. She is a facilitator and adjudicator of UCT's annual moot court competition. She has indicated that she has mentored women legal practitioners during the course of her practice.
- 5.3. While the candidate served as a legal advisor during her university years at the Legal Aid Clinic and gave a presentation at Women Leading in Law, the candidate does not indicate any other initiatives or personal commitment undertaken to actively further the values of the Constitution.

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

- 6.1. As an advocate, the candidate has no experience in constitutional law or public law. She is experienced in matrimonial and childcare matters, general commercial matters, property matters, insolvency matters, and delictual matters. The candidate also has experience in personal injury, tax, shipping, intellectual property, and divorce law.
- 6.2. However, the candidate has presided over criminal law, administrative law, and constitutional law matters as an acting judge.

7. Judgments of the candidate that have been taken on appeal

- 7.1. The candidate has disclosed that the following three judgments were taken on appeal but were dismissed by the SCA:
 - 7.1.1. *K2012150042 (South Africa) (Pty) Ltd v Zitonix (Pty) Ltd* (17200/2016) [2017] ZAWCHC 4; [2017] 2 All SA 232 (WCC); [2017] 1 CPLR 76 (WCC) (7 February 2017);

- 7.1.2. *City of Cape Town v Z D Stoffberg & Others*; and
- 7.1.3. *Abet Inspection Engineering (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Another (15599/16) [2017] ZAWCHC 39 (8 March 2017)*.

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

- 8.1. The candidate practiced as an attorney for a year and then as an advocate at the bar for 20 years.
- 1.2. She is an accredited mediator and arbitrator and has acted as a Small Claims Court commissioner for three years.
- 1.3. She is a panel member of the Commercial Property Tribunal.
- 1.4. The candidate has, since 2016, acted as a judge for a cumulative period of approximately 59 weeks.

9. The candidate’s linguistic and communication skills

- 9.1. The candidate’s judgments are written in English.
- 9.2. Nothing in the judgments indicates that the candidate’s linguistic and communication skills are inadequate.

10. The candidate’s ability to produce judgments promptly

- 10.1. The candidate has indicated that the following judgments were outstanding on 12 June 2024:
 - 10.1.1. *Mostert N.O. & 3 others v Du Preez N.O. & Others* - judgment reserved on 15 April 2024 (Civil Trial);
 - 10.1.2. *Import & Export VK (Pty) Ltd v Prins Vervoer CC* – judgment reserved on 16 April 2024 (Civil trial);
 - 10.1.3. *Van Eeden N.O. & Another v De Hoop Collection (Pty) Ltd* - judgment reserved on 23 May 2024 (Civil Trial); and
 - 10.1.4. *W M Wagenaar N.O. & Others v Valuation Appeal Board* - judgment reserved on 7 June 2024.
- 10.2. The candidate appears to have delivered all her judgments within three months.

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

11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

12. The candidate's independent-mindedness

12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent-mindedness.

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

13.1. The candidate worked for a year as a management consultant before completing pupillage.

13.2. She served as the Assistant Secretary / Treasurer of the Cape Bar Council from 2018 to 2019.

13.3. She has been a director of a non-profit company and of the Cape of Good Hope SCPA for a number of years.

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

14.1. Although the candidate has accumulated more than a year's worth of experience acting as a judge over the past eight years, only two of her judgments are reported, and she has only one reported judgment as counsel over the course of a 20-year career.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *K2012150042 (South Africa) (Pty) Ltd v Zitonix (Pty) Ltd* (17200/2016) [2017] ZAWCHC 4; [2017] 2 All SA 232 (WCC); [2017] 1 CPLR 76 (WCC) (7 February 2017)
2. *Transcend Residential Property Fund Limited v Mati and Others* (14639/2017) [2018] ZAWCHC 40; 2018 (4) SA 515 (WCC) (20 March 2018)

Unreported judgments

3. *M.A v Chairperson of the Refugee Appeal Board and Others* (19483/2015) [2017] ZAWCHC 19 (28 February 2017)
4. *Abet Inspection Engineering (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Another* (15599/16) [2017] ZAWCHC 39 (8 March 2017)
5. *Oosthuizen v Oosthuizen and Others* (8307/2016) [2017] ZAWCHC 43 (14 March 2017)
6. *The State v Mxolisi Rwanqa*, delivered on 12 June 2017
7. *Cape Peninsula University of Technology v Ma-Afrika Hotels (Pty) Ltd - Counter-Application* (4899/23) [2023] ZAWCHC 276 (10 November 2023)
8. *Trustees for time being of P G Williams Family Trust and Others v Williams and Others* (87/2023) [2024] ZAWCHC 30 (31 January 2024)

Judgments upheld on appeal

9. *K2012150042 (South Africa) (Pty) Ltd v Zitonix (Pty) Ltd* (17200/2016) [2017] ZAWCHC 4; [2017] 2 All SA 232 (WCC); [2017] 1 CPLR 76 (WCC) (7 February 2017)
10. *Stoffberg N.O. and Others v City of Cape Town* (1325/2017)
11. *Abet Inspection Engineering (Pty) Ltd v Petroleum Oil and Gas Corporation of South Africa (SOC) Ltd and Another* (15599/16) [2017] ZAWCHC 39 (8 March 2017)

Judgments dismissed on appeal

12. None

Academic writings

13. None