

JUDICIAL SERVICE COMMISSION

CONSOLIDATED CRITERIA, GUIDELINES AND PROCEDURE WHEN CONSIDERING CANDIDATES FOR JUDICIAL APPOINTMENT AND REGARDING BREACHES OF MEMBERS' DUTIES OF CONFIDENTIALITY, LAW AND ETHICAL STANDARDS (“Consolidated Criteria, Guidelines and Procedure”)

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PREAMBLE

- 1 Section 178 of the Constitution provides for the establishment of the Judicial Service Commission, a body that has powers and functions assigned to it in the Constitution and in the National Legislation.
- 2 The purpose of this document is to consolidate the Judicial Service Commission's:
 - 2.1 Criteria and Guidelines for Judicial Appointment published for comment on 27 October 2022 and approved in April 2023;
 - 2.2 revised and updated procedure approved on 13 April 2026 subject to the public consultation process and published for comment on 17 August 2026; and
 - 2.3 approach to breaches of its members' duties of confidentiality, legal obligations and/or ethical standards.
- 3 The JSC's purpose is enhance the public's understanding of the JSC's selection of judicial officers, to ensure openness and transparency and to ensure consistency in its own decision-making process.

THE CRITERIA FOR JUDICIAL APPOINTMENT

The Constitutional Criteria

4 Section 174 of the Constitution provides as follows:

- (1) *Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.*
- (2) *The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.*

5 Section 165(2) of the Constitution provides as follows:

The courts are independent and subject only to the Constitution.

6 These criteria are captured as follows:

- 6.1 is the candidate an appropriately qualified person?
- 6.2 is the candidate a fit and proper person?
- 6.3 would the candidate's appointment help to reflect the racial and gender composition of South Africa?
- 6.4 would the candidate be independent?

- 7 The constitutional requirements are framed in broad and general terms, and are a minimum threshold and are not exhaustive of the criteria to be considered for appointment. The factors set out below explain the requirements. There is no list of pre-determined questions. The factors to be taken into account do not constitute a closed list or restrict questioning, provided that all questions must be relevant to the criteria. The weight to be attached to individual factors may differ depending on the circumstances.

Appropriately qualified

- 8 This concerns the candidate's academic and professional qualifications, technical competence, skill and experience. It is not a reference to academic qualifications only, but also covers legal knowledge and experience.
- 9 It is desirable for applicants to be assessed on their own merits to determine whether they meet the "appropriately qualified" requirement, having regard to both prior acting appointments as a judge and as a practitioner in the courts.
- 10 The JSC will consider the candidate's judicial track record, experience in their practice and good judgement. Regard will be had to the candidate's ability to run a court room, a working knowledge of court procedure and forensic skill. The candidate's qualities under this section should be apparent from their judgments and awards (reported and unreported) and/or their track record as a practitioner and/or their publications.
- 11 It is desirable for candidates to have acted in a judicial or quasi-judicial role but this is not an essential requirement, particularly when it comes to elevation

to an appellate court, including the Competition Appeal Court, Labour Appeal Court, Supreme Court of Appeal, and Constitutional Court. Appellate experience both as a practitioner or as an acting judge would be a relevant consideration in the latter circumstance, but it should not be given excessive weight over other considerations.

- 12 Local knowledge and expertise should be valued, but it should not be a disqualifying factor if the candidate does not come from that region.
- 13 The particular court and its level within the judicial hierarchy should be factors influencing what makes a candidate appropriately qualified for appointment, having regard to the different functions of the courts. This would include:
 - 13.1 an appreciation for the Constitution as the supreme law and for the values of the Constitution;
 - 13.2 an appreciation that the Constitution envisages the appointment of non-judges to the Constitutional Court, which envisages the inclusion of legal academics, attorneys and advocates for direct appointment to the Court;
 - 13.3 that candidates for specialist courts would be expected to have particular experience and skill in the relevant area;
 - 13.4 an ability to resolve commercial disputes in a just, economical and expeditious manner, with due regard to precedent;

- 13.5 an understanding of social media and technology to enable them to deal with disputes concerning, for example, privacy, data gathering and the effects of the publication of damaging information; and
- 13.6 in addition to other qualities, those applying for leadership positions in the judiciary should have vision, leadership qualities, good interpersonal and case-management skills, and must have demonstrated maturity of judgement and relational wisdom.

Fit and proper

- 14 This concerns a holistic assessment of a candidate's suitability for appointment to the bench, with reference to a broad and cumulative reading of multiple factors, which will include integrity, knowledge, scholarship, experience, dignity, humility, courtesy, judgement, wisdom, independence, character, courage, forensic skill, capacity for articulation, diligence, energy and industry. Character includes considerations such as whether a candidate is honest, truthful, trustworthy and whether they keep their word.
- 15 The proposed appointee must be a competent and experienced person, and must be technically competent and have the capacity to give expression to the values of the Constitution.
- 16 Judges must interpret and enforce the Constitution in such a way as to support its fundamental values of democracy, the rule of law and the protection of fundamental human rights. All candidates should be able to demonstrate an understanding of the Constitution and the importance of infusing the

jurisprudence of our courts with the core Constitutional values, rights and obligations. Judges must be able to discern and articulate the principles which underlie the Constitution. For example, they must understand the importance of a commitment to the realization of socio-economic rights, especially for poor people, and access to justice.

- 17 Candidates must be capable of applying or distinguishing previous decisions of other courts, and they must be able to give expression to the moral convictions of an open and democratic society based on freedom and equality. Judges must be able to explain cogently and concisely why they rejected any plausible argument. They must have the ability to explain their decisions clearly and succinctly to all those involved.
- 18 All this requires considerable forensic and intellectual ability, an appreciation of the practical workings of court procedure, a thorough and general knowledge of law and an appreciation of the relevant ethical duties and rules designed to protect the integrity of the legal process.
- 19 The candidate should have a good judicial temperament. This includes such factors as fair-mindedness, humility, impartiality, courtesy, patience, respect, fairness, sensitivity to social context, commitment to public service and the equal administration of justice. The candidate should show courtesy, patience and respect to all who appear before the candidate including unrepresented litigants, witnesses, practitioners appearing before them and colleagues.
- 20 Consideration will be given to whether the candidate is a person with the necessary energy and motivation, writing skills, critical reasoning, diligence,

stamina, industry, work ethic and productivity, particularly in respect of the delivery of judgments without undue delay.

- 21 The candidate's qualities under this section should be apparent from their judgments and awards (reported and unreported) and/or their track record as a practitioner and/or their publications.

Reflection of the racial and gender composition of South Africa

- 22 It is a constitutional imperative that race and gender must be taken into account in the selection of judges to achieve representativity and diversity.

- 23 The constitutional instruction must be understood as reflecting that the Courts, to do justice, must have the capacity to understand and relate to the experiences of all South Africans. The concern is with the effectiveness of the Court as an instrument of justice. The constitutional instruction is based on the conviction that the Court must be constituted from a broad enough spectrum of South African society to be able to understand the experience of all South Africans and empathise with their needs. The ability to understand the experience of a race or a gender and empathise with its needs is generally present to a much greater degree in those who have lived that experience than in those who have merely studied it.

- 24 The “*need to constitute a court which is ... representative in respect of race and gender*” cannot be understood to rigidly or mechanically require that each court represents the races and genders in direct proportion to their share of the national population. It is recognised that a balance must be struck: whilst

a particular court may not represent the races and genders in direct proportion to their share of the national population (although appointments to that court should seek to reflect the need to transform that particular court), the racial and gender composition of the judiciary remains an important factor. Diversity is a quality without which the Court is unlikely to be able to do justice to all the citizens of this country, but it is not an independent requirement, superimposed upon the constitutional requirement of competence. Properly understood, diversity is a component of competence – the Court will not be competent to do justice unless, as a collegial whole, it can relate fully to the experience of all who seek its protection. It is for this reason that, if the Court does not meet the standard set by the constitutional instruction, it will lack the confidence of the nation, and consequently lack legitimacy.

- 25 The constitutional imperative suggests a general concern that judges should be sensitive to the experience and needs of all who supplicate for justice before them. A capacity for empathy and an appreciation of the needs of the community are therefore relevant considerations in the selection of judges.
- 26 In evaluating a candidate's professional experience and potential, the JSC may take into consideration that opportunities for advancement in the profession for black persons and women were limited by institutional, historical, systemic and other barriers. The reality of race-based and gender-based bias, which hinder worthy candidates from obtaining experience and competency in certain areas of practice, should not result in candidates being unfairly disqualified. This is particularly relevant when considering a black female candidate. Where a candidate who will not enhance racial or gender

representativity is better qualified in an important respect, the JSC should give due consideration to that fact in weighing all relevant factors. These may include the overall needs of the judiciary at the relevant time, the performance and needs of the relevant court, discrimination that still pervades legal practice and the extent to which the candidate may have been historically prejudiced.

- 27 A candidate's commitment and contribution to transformation will be considered. In addition, the candidate's commitment and participation to community-based and professional structures will be considered.
- 28 The message that a particular appointment may convey to the community at large will also be considered.

Independence

- 29 Judges should make their own decisions independently and be possessed of courage, fairness and good judgement.
- 30 Judicial independence means that the judge is required to make up his or her own mind on an issue, independently of pressure or coercion from some other person or body, and independently of loyalty or affiliation to some other person or body.
- 31 The judge must have the courage and the integrity to be able to resist pressure, which may be external, such as political, commercial or personal, or internal, such as a desire for popularity and even the pressure of a direct threat. A judge should deliver a judgment which he or she believes is required

by the law and evidence before them and should not be diverted from this course by any such external or internal pressure.

32 Since membership of a society, whether secret or otherwise, or a close political affiliation or loyalty to such a society or organisation, may have a bearing on a candidate's capacity to be an independent judge, a candidate may be questioned about such a membership, affiliation or loyalty. Membership of, or affiliation with, an organisation which demonstrably seeks to undermine the values of the Constitution, may be a disqualifying consideration.

33 This does not mean that the candidate has to be free of personal convictions, political or other, that might be relevant to a case. But the candidate must have the capacity to put her or his own convictions at a sufficient distance – to view those convictions with sufficient detachment – to be able to evaluate the arguments and the evidence in the case with an open mind. Openness to persuasion is an indispensable quality in a judge.

34 It is clear that a judge cannot be relied upon to bring these qualities to bear unless she or he is a person of courage and integrity. A person of integrity is someone who is faithful to his or her principles and oath of office. None of this means that the character of a candidate for appointment to the Court has to be free of all lapses or blemishes; but a personal history of hypocrisy, dishonesty, opportunism or expediency will disqualify a candidate from being appointed to a judicial office.

Guidelines regarding the JSC's approach to the interviews

- 35 The interviewing process is to be governed by an overarching and all-embracing principle of fairness and respect for a candidate's dignity. While the interviews should be thorough and robust, Commissioners should be reminded that in their questioning, they are required to respect the dignity candidates. Therefore, humiliating a candidate or asking sexist or racist questions, for example, should not be permitted.
- 36 Questions put by commissioners to a candidate must be relevant to the criteria. It is the obligation of the chair of the JSC to enforce this guideline rigorously. In doing so, the chair will enjoy a discretion. After hearing the commissioners, the chair's ruling on the permissibility of a question will be final.
- 37 A candidate may not be asked a question which cannot be answered without giving an undertaking or a commitment about how the candidate would answer that question if it arose for decision before the Court. Questioning of this kind is not compatible with a judge's duty to approach issues entrusted to them for adjudication independently and with an open mind, as judges should not commit themselves to an answer before hearing argument. A candidate must decide impartially and so can offer no forecasts, or hints, that may indicate a disregard for the specifics of the particular case.
- 38 The object of the selection process is to discover the candidates who are best qualified for the Court and that judges of the highest calibre possible are

appointed. The search is therefore primarily for positive qualities, not disqualifications.

- 39 This does not mean that the JSC can ignore serious disqualifying allegations. In regard to such allegations, and because they may affect a candidate's reputation or dignity or otherwise intrude into the candidate's privacy, and/or the reputation or independence of the judiciary, the following guidelines will be applied:

39.1 the allegation must be of such a nature that, if true, could potentially render the candidate not a "*fit and proper*" person;

39.2 unless a sufficient substantiation for the allegation exists and the candidate is given advance written notice of the allegation with sufficient time to prepare to meet allegations, the matter may not be raised with the candidate during the interview;

39.3 the JSC will receive input from the Objection Committee.

PROCEDURE

- 40 In terms of section 178(6), the JSC is empowered to determine its own procedures, although its decisions must be supported by majority of members.

- 41 Where it is in the interests of justice and appropriate to do so, the JSC may exercise its discretion to depart from or condone any departure from its published procedure.

Vacancies and nominations

- 42 The Head of each Court shall inform the JSC when a vacancy occurs or will occur in his or her Court.
- 43 The JSC shall announce the vacancy publicly and call for nominations by a specified closing date.
- 44 A nomination shall consist of:
 - 44.1 A letter of nomination which identifies the person making the nomination and the candidate.
 - 44.2 The candidate's written acceptance of the nomination.
 - 44.3 The applicable questionnaire, as published by the JSC from time to time and provided with the call for nominations, fully and duly completed by the candidate.
 - 44.4 The candidate's detailed curriculum vitae, together with such further relevant information as the candidate and/or the nominator may provide.

Shortlisting by the Screening Committee

- 45 After the closing date for nominations, all the members of the JSC shall be provided with a list of the names of the nominated candidates and the nomination for each candidate.
- 46 The members of the JSC may inform the screening committee, prior to its meeting, of the names of any candidates who they consider should be included in the shortlist of candidates to be interviewed. Such candidate shall be so included, provided that:
- 46.1 the candidate has submitted the required documentation,
 - 46.2 the recommendation is properly motivated, and
 - 46.3 there is sufficient consensus in the Screening Committee that the candidate is suitable for appointment.
- 47 The screening committee is appointed by the JSC from time to time. It consists of eight members of the JSC, one of whom is the convenor. In addition, the Head of the Court and, where applicable, the Premier of the province concerned, or their designated alternates, may participate in the relevant shortlisting process.
- 48 The convenor of the screening committee shall convene a meeting for the purposes of compiling a shortlist of candidates from the nominations, consisting of those candidates which will be interviewed for permanent and/or

higher and/or alternative judicial appointment (in the case of a Judge seeking appointment to another court).

- 49 The screening committee conducts the shortlisting of candidates in accordance with its published guidelines for the screening of candidates.

Publication and comments on the shortlisted candidates

- 50 The shortlist shall be published for comment by a specified closing date.
- 51 After the aforesaid closing date, the shortlist, together with the nomination of every shortlisted candidate, as well as all the comments received, shall be distributed to all members of the Commission.

Interviews

- 52 The JSC shall interview all shortlisted candidates (unless the candidate withdraws his or her candidacy).
- 53 The interviews for each Court shall be conducted separately.
- 54 Ordinarily, the candidates for a vacancy for a Head (or Deputy Head) of a Court shall be interviewed first. Thereafter, the candidates for appointment as judges of that Court, shall be interviewed.
- 55 The interviews shall be open to the public and the media.

Confidential deliberations

- 56 After completion of each section of the interviews, the JSC shall deliberate in private in regard to the candidates for a particular Head (or Deputy Head) of a Court or the judges of a particular Court.
- 57 The Chairperson shall distil and record a summary of the main reasons for the JSC's support for, or opposition to, the recommendation of each candidate for appointment.
- 58 After completion of the interviews for a specific Court, the Commission shall deliberate in private and shall after deliberation, decide upon the candidates to be recommended for appointment by a majority vote.

The Voting Process

- 59 Voting shall be conducted by way of secret ballot.
- 60 Each member of the JSC present during the interviews and the deliberations may cast a vote on a “**per candidate**” basis. This means that:
- 60.1 A member may vote for a candidate if they consider that the candidate should be recommended for appointment.
- 60.2 By not voting for a candidate, the member has expressed his or her view that the candidate should not be recommended for appointment.

- 60.3 The number of votes that a member may cast is not limited to the number of vacancies.
- 61 A candidate must achieve a majority of votes, failing which he or she cannot be recommended for appointment.
- 62 **A majority of votes** is calculated with reference to the JSC's full complement of members as follows:
- 62.1 Where the full complement is 23 members i.e. when considering the appointment of a judge other than a High Court judge (section 178(1)(a) to (j) of the Constitution), at least **12 votes** are required; or
- 62.2 Where the full complement is 25 members i.e. when considering the appointment of a High Court judge (section 178(1)(a) to (k) of the Constitution) at least **13 votes** are required.
- 63 If a member (or his or her alternate, where permissible) is unable to attend for good reason, he or she must seek the Chairperson's permission to be excused. If a member is unable to attend without reason, the JSC is not quorate. Provided that it is quorate, the JSC may proceed without the excused member (or his or her alternate), but the majority of votes required remains as set out above.
- 64 Should a vacancy remain due to some or all of the candidates not achieving a majority of votes:

- 64.1 The Chairperson may invite the JSC to engage in further deliberations in relation to those of the candidates that did not achieve a majority.
- 64.2 Those of the candidates that did achieve a majority should not be reconsidered in this second process, and should be recommended for appointment.
- 64.3 The deliberations and the second round of voting should be conducted as set out above, *mutatis mutandis*.
- 64.4 A candidate that did not achieve a majority in the first round that achieves a majority in the second round, may be recommended for appointment.
- 65 Should some or all of the candidates achieve a majority of votes and the same number of votes so that there is a tie for a vacancy:
- 65.1 The Chairperson may invite the JSC to again vote for those candidates that achieved a majority.
- 65.2 The deliberations and the second round of voting should be conducted as set out above, *mutatis mutandis*, with any candidates that did not achieve a majority in the first round, being excluded.
- 65.3 The purpose of the second vote is to rank the candidates that achieved a majority in the first round, for recommendation for the remaining vacancy.

Public announcement and advice to the President

- 66 Immediately after the voting process in respect of a Head (or Deputy Head) of a particular Court, or in respect of a particular Court, the JSC shall publicly announce the names of the recommended candidate/s for each vacancy.
- 67 The JSC shall advise the President of the Republic of the names of the recommended candidates for appointment, together with the reasons for the recommendations, as distilled and recorded by the Chairperson.
- 68 In the case of a recommendation for appointment to the Constitutional Court, the JSC's list of nominees in terms of section 174(4)(a) or (c) of the Constitution must contain three more names than the number of vacancies.
- 68.1 If there is one vacancy, four names are required; if there are two vacancies, five names are required, and so on.
- 68.2 If further candidates are required to be recommended in terms of section 174(4)(c) of the Constitution, the JSC may in its discretion select them:
- 68.2.1 from the candidates already interviewed; or
- 68.2.2 by repeating the process as set out above, commencing with the publication of the vacancies and the call for nominations.

- 69 In the case of a recommendation for appointment to any other Court, the JSC's advice shall be made in terms of section 174(6) of the Constitution, as read with the relevant national legislation, for example: section 8 of the Land Court Act, 6 of 2023 or section 153 of the Labour Relations Act 66 of 1995.

Transfer of Judges from one Court to another

- 70 A Judge of a High Court who wishes to be transferred to another High Court may be considered for such transfer only if the JSC has advertised a vacancy in the Court to which he or she seeks to be transferred.
- 71 A Judge of a High Court seeking such transfer shall be required to complete the standard questionnaire for Judges and be interviewed by the JSC in the normal course together with the other candidates.
- 72 A transfer of such Judge may only be effected after a decision of the JSC recommending such transfer.

BREACHES OF MEMBERS' DUTIES OF CONFIDENTIALITY, LAW AND ETHICAL STANDARDS

The Constitutional duties of those nominating members of the JSC

- 73 In terms of section 178(1) of the Constitution, the JSC is composed of 25 members. It is presided over by the Chief Justice.

- 74 Members include the President of the Supreme Court of Appeal; one Judge President designated by the Judges President; the Minister of Justice and Constitutional Development; two practicing advocates nominated from within the advocates' profession; two practicing attorneys nominated from within the attorneys' profession; one teacher of law, designated by the teachers of law at South African universities; six members from the National Assembly, including three from opposition parties; four members from the National Council of Provinces; four more persons designated by the President after consulting the leaders of all the parties in the National Assembly; and the Judge President and the Premier of the relevant province.
- 75 Those that bear the responsibility of nominating, designating or electing individuals for membership of the JSC bear the responsibility to ensure that their designated representative on the JSC complies with that designating authority's legal, ethical and professional standards.¹

The legal, ethical and professional standards

- 76 The legal, ethical and professional standards of the designating authorities are set out in *inter alia*:

¹ Helen Suzman Foundation v Judicial Service Commission 2018 (7) BCLR 763 (CC) at [37]. Democratic Alliance v Hlophe and Others [2025] ZAWCHC 234 at [71] and [72].

- 76.1 Section 38(3)(b) of the Judicial Service Commission Act, 9 of 1994, which imposes a duty of confidentiality on the members of the JSC (and on others having access to the JSC's confidential information).
- 76.2 The Code of Judicial Conduct,² which obliges members of the judiciary to uphold ethical standards and *"at all times, also in relation to extra-judicial conduct, comply with the law of the land."*³
- 76.3 The Executive Members Ethics Act, 82 of 1998, which obliges members of the Executive to comply with the law and the Executive Ethics Code GNR41.⁴
- 76.4 The Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members, which imposes duties on members of Parliament, including to perform their duties on the JSC in accordance with the public trust placed in her or him, placing the public interest above her or his own interests.⁵

² GN R865, Government Gazette 35802 of 18 October 2012.

³ Article 6.

⁴ Government Gazette 21399 of 28 July 2000.

⁵ In terms of clause 11(1): *"A Member who has been selected by Parliament or a House to serve on a statutory or constitutional body does so in furtherance of her or his duties and responsibilities as a Member."* Clauses 3(c) to (e) require members to *"(c) act on all occasions in accordance with the public trust placed in her or him; (d) place the public interest above her or his own interests when discharging her or his obligations in terms of the Constitution, to Parliament and the public at large; (e) maintain public confidence and trust in the integrity of Parliament and thereby engender the respect and confidence that society needs to have in Parliament as a representative institution"*.

76.5 The LPC Code of Conduct,⁶ which requires attorneys and advocates to “*maintain the highest standards of honesty and integrity*”; to “*refrain from doing anything which could or might bring the legal profession into disrepute*” and to *honour their undertakings*”.⁷

Breaches of legal, ethical and professional standards

77 Where the JSC has a reasonable basis to consider that a member’s conduct in performing her or his duties as a member of the JSC may be in breach of her or his duties of confidentiality, his or her legal obligations and/or the ethical standards by which the member is bound, it shall request the relevant designating body or appointing power to remove, replace or discipline the member.⁸

Judicial Service Commission

October 2026

Consolidated Criteria, Guidelines and Procedure: publication for comment

⁶ Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities GenN 168, Government Gazette 42337 of 29 March 2019.

⁷ Items 3.1; 3.4 and 3.15.

⁸ Section 178(3) of the Constitution.