

## Judicial Service Commission (JSC)

Extracts from the report by Milton Seligson SC, Cape Bar; GCB representative on the JSC for the period July 2003-June 2004

### Composition of the JSC

As a result of the general election in April 2004, the composition of the JSC will change with a new Minister of Justice having been appointed and changes in the designated representatives of the National Assembly and the National Council of Provinces, as well as the four persons appointed by the President as head of the National Executive.

### Meetings of the JSC

There was a meeting of the commission in Cape Town from 7-11 October 2003 at the Vineyard Hotel Conference Centre. The second meeting, which was to have been held during April 2004, was postponed on account of the general election on 14 April 2004 and was rescheduled for 6-9 July 2004.

The Screening Committee of the JSC (also known as the Sifting Committee) held meetings for the purpose of short-listing candidates for appointment to the judiciary on 2 August 2003 and 21 February 2004. As its name implies, the Screening Committee performs the task, in collaboration with the head of the division of the High Court concerned, of selecting for interview by the full commission those applicants who have a realistic prospect of appointment. The Screening Committee, during the year under review, consisted of Milton Seligson SC (chair), MTK Moerane SC, KD Moroka, Prof J Neethling, J von Klemperer and S Nkanunu.

### Appointments to the judiciary

The following persons were nominated for appointment to the judiciary at the October 2003 meeting of the JSC:

#### Constitutional Court

In terms of section 174(4)(b) of the Constitution, the President is empowered to appoint judges to any vacancy which may occur on this court. The commission's function is to provide the President with three names more than the number of appointments to be made, from which the President makes the required appointment(s) after consulting the Chief Justice and the leaders of parties represented in the National Assembly. The commission resolved to submit the names (in alphabetical order) of the following persons for consideration to fill the vacan-

cies in the court caused by the retirement of Mr Justice LWH Ackermann and Mr Justice RJ Goldstone:  
Mr Justice BR du Plessis  
Mr Justice CN Jafta  
Ms Justice YS Meer  
Mr Justice TL Skweyiya  
Mr Justice JV van der Westhuizen  
The President subsequently appointed TL Skweyiya and JV van der Westhuizen JJ to fill the two vacancies on the Constitutional Court.

#### Cape Provincial Division

Ms R Allie

#### Northern Cape Provincial Division

Adv CJ Olivier  
Mr LP Tlaletsi

#### Natal Provincial Division

Adv KGB Swain SC

#### Transvaal Provincial Division

The JSC resolved to make no recommendation for this division.

#### Bisho High Court

Mr CT Sangoni

#### Mmabatho High Court

Adv RD Hendricks

#### Electoral Court

Ms SW Abro  
Ms S Moodley

The following nominations for appointment to the judiciary were considered at the July 2004 meeting of the JSC: (*The persons subsequently appointed by the President are indicated in italics – Editor.*)

#### Supreme Court of Appeal – One vacancy

Mr Justice NJ Motata  
*Ms Justice BJ Van Heerden*

#### Cape Provincial Division – One vacancy

Mr GM Budlender  
*Mr DV Dlodlo*

#### Mmabatho High Court – One vacancy

*Mr Justice AA Landman*

#### Natal Provincial Division – Two vacancies

*Adv SK Ndlovu*  
*Ms K Pillay*  
Adv MD Southwood SC  
Mr Justice G Webster

#### Transvaal Provincial Division – Five vacancies

Mr MHE Ismail  
*Mr MF Legodi*  
*Mr BH Mbha*  
Mr DSS Moshidi  
Adv WRC Prinsloo  
*Adv HK Saldulker*  
*Mr MP Tsoka*  
Adv JCW van Rooyen SC

#### Water Tribunal – chairperson

Adv MG Khoza  
Mr MM Mabesele  
Ms RT Stein  
Mr H Thompson  
Adv M Uys

### Judicial training and orientation

Funding is being sought for a more comprehensive and structured judicial training program. The JSC accepts that effective judicial training is important, both to enhance the skills of transformation candidates, and to enable experienced judges to keep abreast of new developments in the law. It has been suggested that bodies such as the GCB be requested to consider programs dedicated to preparing candidates for the Bench and to identify suitable transformation candidates as a preparatory step to their enrolment in the training programmes for aspirant judges.

### Complaints against judges

The proposed legislation to establish a judicial council to consider complaints against sitting judges and to provide for a disciplinary process in respect of judicial misconduct has not yet materialised. Virtually all complaints received on a regular basis by the JSC against sitting or acting judges are referred to the complaints subcommittee of the JSC, which reports to the JSC thereon at its bi-annual meetings. The JSC has no jurisdiction to hold judges accountable or to discipline them, save where it makes a finding of gross incompetence or gross misconduct and this is followed by a resolution of the National Assembly for the judge's removal from office, as provided for in section 177(1) of the Constitution. The JSC is, in any event, ill-equipped to deal with transgressions falling short of these criteria. There is, however, a clear and present need for a system that ensures both the accountability of judges and their observance of an acceptable code of judicial conduct in performing their duties. Such a system should be overseen by senior members

of the judiciary itself, bearing in mind the need to preserve the judiciary's independence and to maintain the separation of its powers from the other branches of government. In my view, the continuing delay in the introduction of appropriate legislation is unacceptable and not in the public interest.

## GCB reports to the JSC

As I have mentioned in the past, reports

from the different branches of the legal profession, including the GCB, as to the suitability of candidates for appointment to the Bench, have an important role to play in the interviews of candidates by the JSC and in its deliberations. I would like to reiterate that where there are criticisms of a candidate, specific facts should be given, if at all possible, rather than generalisations gleaned from unstated or anonymous sources. I believe

that where feasible, the reports should be garnered from colleagues who either know, or have appeared with or against, the particular candidate, or from other sources who are in a position to comment fairly on the candidate's proficiency and suitability. I remain convinced that the GCB's input is vital to the process, even though its views as to specific candidates may not always find favour with the majority of the commission. 

## Pupillage: the rule changes and supervised practice

*AJ Dickson SC, National Pupillage Co-ordinator, KwaZulu-Natal Bar*

The Bar Examination has yet to be written, but the feedback from the Bars around the country has put us in a position to identify and implement constructive adaptations to pupillage for 2005.

The overwhelming view is that the *Marnewick Course Manual* is an excellent instructive tool, and as I write, Chris Marnewick SC is writing the 2005 edition to which he is introducing improvements and updates.

### The 2004 review

The 2004 experimental programme will be reviewed continuously until the examination results and all necessary changes will be made to pupillage for next year.

Already it is clear that the following changes would contribute to a more effective preparation for practice:

- A longer period of supervised practice after the examination results.
- A slightly shorter course before the examinations to allow the examinations to take place earlier.

These changes address one of the most acutely felt disadvantages of the one-year pupillage - the difficulty of sustaining oneself for a whole year without income.

It should be said that the primary relief must come from bursary or charitable funding for pupils. This is presently largely the responsibility of each Bar and will continue to be so. However, it would be helpful if the pupils had the opportunity of earning fees during their pupillage.

The course designer is satisfied that he can adapt the course to a 24-week period. This allows the examination to be written in August (see full programme below). The earlier examination will allow pupils who pass outright the opportunity of practising under supervision for the last third of pupillage. The pupils who pass later on the oral

examination will have to wait a little longer to practise.

### Supervised practice

The concept of supervised practice is in complete harmony with the principles which have founded the new pupillage course: 'learning by doing.'

The GCB Uniform Rules of Ethics have been completely overhauled to accommodate the one-year pupillage course. These changes were adopted at the GCB Annual General Meeting in July this year.

The new rule provides for supervised practice in three stages :-

- appearances together with the pupil's mentor without remuneration in the first six months;
- remunerative practice in limited categories for certified pupils under the supervision of the mentor from 1 July until a pass in the Bar Examination is achieved; and
- remunerative practice in all matters (save for the CC and the SCA) under the supervision of the mentor for the remainder of pupillage.

This rule and supervised practice will be implemented this year. However, it is in 2005, with the increased time allocated to this period, that it will realise its full potential as a means of preparing the pupils for the real needs of practice. It also has the significant advantage of providing the pupil with a means of support.

During this period the pupil will undergo advanced advocacy training. Practice here is subject to full attendance at advocacy training and also the conditions that may be attached by the Bars themselves relating to chambers, professional indemnity insurance and other domestic issues. I am confident that the widening of supervised practice will be an excellent method of finishing the education and empowerment of pupils.



*AJ Dickson SC*

### Extramural employment of pupils

During the first six months of pupillage, pupils are now entitled to be gainfully employed otherwise than as an advocate and outside the normal training day. Pupils may therefore take on night employment in order to sustain themselves financially. In this way the GCB has swept away some of the petty restrictions which have hindered pupils and has demonstrated its commitment to ensuring that entry to the profession is freely available.

### Pupillage format for 2005

**January:** Introduction to the Bar and orientation.

**February to July:** Pupillage workbook course instruction.

**August:** Bar examinations.

(**September:** Oral / supplementary examinations).

**August to December:** Supervised practice, advanced advocacy training and preparation for practice.

Applications to serve pupillage must be lodged with the Bar in question by 30 September 2004. Each Bar will be entitled to limit its numbers of pupils to its own capacity. A registration fee, an examination fee and a pupillage levy is payable by all pupils. Dispensations and funding for deserving pupils are available. 