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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 423

27 March 2003

JUDICIAL SERVICE COMMISSION ACT, 1994 (ACT NO. 9 OF 1994): PROCEDURE OF COMMISSION

Under section 5 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994), 1, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, hereby make known the particulars of the procedure which the Judicial Service Commission has determined in terms of section 178 (6) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in the Schedule hereto.

P. M. MADUNA

Minister for Justice and Constitutional Development

SCHEDULE

Definitions

1. In this Procedure, unless the context otherwise indicates -

"the Commission" means the Judicial Service Commission;

"the Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"the Institutions" means the Law Society of South Africa, the Black Lawyers Association, the Department of Justice and Constitutional Development, the General Council of the Bar of South Africa, the Magistrates Association of South Africa, the National Association of Democratic Lawyers, the Society of Teachers of Law and the Association of Regional Magistrates of South Africa, and such other institutions with an interest in the work of the Commission as the Commission may identify from time to time;

a selection made by "majority vote" is one made with the support of at least an ordinary majority of all the members of the Commission; and

"the screening committee" means an *ad hoc* subcommittee of the Commission constituted from time to time.

Judges of the Constitutional Court

2. The procedure for the nomination of candidates for appointment as judges of the Constitutional Court in terms of section 174 (4) and (5) of the Constitution shall be as follows:

(a) The Chief Justice shall inform the Commission when a vacancy occurs or will occur in the Constitutional Court.

(b) The Commission shall announce the vacancy publicly and call for nominations by a specified closing date.

(c) Each nomination contemplated in paragraph (b) shall consist of -

(i) a letter of nomination which identifies the person making the nomination and the candidate;

(ii) the candidate's written acceptance of the nomination;

(iii) a detailed *curriculum vitae* of the candidate which shall disclose his or her formal qualifications for appointment as prescribed in section 174 (1) of the Constitution, together with a questionnaire prepared by the Commission and completed by the candidate; and

(iv) such further pertinent information concerning the candidate as he or she, or the person nominating him or her, wishes to provide.

(d) After the closing date, all members of the Commission shall be provided with a list of the candidates nominated with an invitation to -

(i) make additional nominations should they wish to do so and such nominations shall comply with the requirements of paragraph (c) above; and

(ii) inform the screening committee of the names of the candidates, if any, who they feel strongly should be included in the short list of candidates to be interviewed.

(e) The screening committee may, in its discretion, receive and consider nominations received after the specified closing date and shall prepare a short list of candidates to be interviewed which shall include all candidates who qualify for appointment and who -

- (i) are referred to in paragraph (d) (ii); or
 - (ii) in the opinion of the screening committee or any of its members, have a real prospect of recommendation for appointment.
- (f) (i) The short list of candidates proposed by the screening committee shall forthwith be submitted to the members of the Commission.
- (ii) Within 7 days of receipt of the short list any member of the Commission may request the Secretary of the Commission in writing to add to the short list the name of any candidate who was duly nominated, but who was not included in the short list, and who the member feels strongly should be added to the short list of candidates to be interviewed.
- (iii) The name of any such candidate shall thereupon be added to the short list.
- (g) The short list shall be distributed to the institutions and publicly announced for comment by a specified closing date.
- (h) After the closing date referred to in paragraph (g), the short list and all the material received on short-listed candidates shall be distributed to all the members of the Commission.
- (i) The Commission shall interview all short-listed candidates.
- (j) The interviews contemplated in paragraph (i) shall be open to the public and the media subject to the same rules as those ordinarily applicable in courts of law and shall not be subject to a set time-limit.
- (k) After completion of the interviews, the Commission shall deliberate in private and shall, if deemed appropriate, select the candidates to be recommended for

appointment in terms of section 174 (4) of the Constitution by consensus or, if necessary, by majority vote.

(l) The chairperson and deputy chairperson of the Commission shall distil and record the Commission's reasons for recommending the candidates selected.

(m) The Commission shall advise the President of the Republic of the names of the candidates recommended for appointment and of the reasons for their recommendation.

(n) The Commission shall announce publicly the names of the candidates recommended for appointment.

(o) If further candidates have to be recommended in terms of section 174 (4) of the Constitution, the Commission may in its discretion select them -

(i) from the candidates already interviewed *mutatis mutandis* in accordance with the procedures described in paragraphs (k) to (n); or

(ii) by repeating the whole process *mutatis mutandis* in accordance with the procedures described in paragraphs (b) to (n).

Judges of the High Court

3. The procedure for the selection of candidates for appointment as judges of the High Court in terms of section 174 (6) of the Constitution shall be as follows:

(a) The President of the Supreme Court of Appeal or responsible Judge President shall inform the Commission when a vacancy occurs or will occur in the Supreme Court of Appeal or any provincial or local division of the High Court.

(b) The Commission shall inform the institutions of the vacancy and shall call for nominations by a specified closing date.

(c) A nomination contemplated in paragraph (b) shall consist of -

(i) a letter of nomination which identifies the person making the nomination, the candidate and the division of the High Court for which he or she is nominated;

(ii) the candidate's written acceptance of the nomination;

(iii) a detailed *curriculum vitae* of the candidate which shall disclose his or her formal qualifications for appointment as prescribed in section 174 (1) of the Constitution, together with a questionnaire prepared by the Commission and completed by the candidate; and

(iv) such further pertinent information concerning the candidate as he or she or the person nominating him or her, wishes to provide.

(d) After the closing date, all the members of the Commission shall be provided with a list of the candidates nominated with an invitation to -

(i) make additional nominations should they wish to do so and such nominations shall comply with the requirements of paragraph (c) above; and

(ii) inform the screening committee of the names of the candidates, if any, who they feel strongly should be included in the short list of candidates to be interviewed.

(e) The screening committee may, in its discretion, receive and consider nominations received after the specified closing date and shall prepare a short list of candidates to be interviewed, which shall include all candidates who qualify for appointment and

who -

(i) are referred to in paragraph (d) (ii); or

(ii) in the opinion of the screening committee or any of its members, have a real prospect of selection for appointment.

(f)(i) The short list of candidates proposed by the screening committee shall forthwith be submitted to the members of the Commission.

(ii) Within 7 days of receipt of the short list any member of the Commission may request the Secretary of the Commission in writing to add to the short list the name of any candidate who was duly nominated but who was not included in the short list and who the member feels strongly should be added to the short list of candidates to be interviewed.

(iii) The name of any such candidate shall thereupon be added to the short list.

(g) The short list shall be distributed to the institutions for comment by a specified closing date.

(h) After the closing date referred to in paragraph (g), the short list and all the material received on short-listed candidates shall be distributed to all the members of the Commission.

(i) The Commission shall interview all short-listed candidates.

(j) The interviews contemplated in paragraph (i) shall be open to the public and the media subject to the same rules as those ordinarily applicable in courts of law and shall not be subject to a set time limit.

(k) After completion of the interviews, the Commission shall deliberate in private and shall, if deemed appropriate, select the candidates for appointment by consensus or, if necessary, majority vote.

(l) The Commission shall advise the President of the Republic of the name of the successful candidate for each vacancy.

(m) The Commission shall announce publicly the name of the successful candidate for each vacancy.

Transfer of judges from one High Court to another

4. (a) A judge of a High Court who wishes to be transferred to another High Court may be considered for such transfer only if a vacancy occurs in the Court to which he or she seeks to be transferred and such vacancy has been advertised by the Commission.

(b) A judge seeking such transfer shall be required to apply for such vacancy, to complete the standard questionnaire for judges, and to be interviewed by the Commission in the normal course together with other candidates.

(c) A transfer of such judge may only be effected after a decision of the Commission recommending such transfer.

President of the Land Claims Court

5. When a vacancy occurs in the office of President of the Land Claims Court, the Commission shall advise the President of the Republic on a candidate for appointment as President of the Land Claims Court in terms of section 22(3) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), after the Commission has acted *mutatis mutandis* in accordance with the procedure for the selection of candidates for appointment as judges of the High Court.

Additional Judges of the Land Claims Court

6. The procedure for consultation with the President of the Republic on the appointment of additional judges of the Land Claims Court in terms of section 22 (4) of the Restitution of Land Rights Act, 1994, shall be determined on an *ad hoc* basis in consultation with the Office of the President of the Republic.

Departure

7. The Commission may depart or condone any departure from this procedure whenever, in its opinion, it is appropriate to do so.

Withdrawal

8. This Procedure replaces the Procedure promulgated by Government Notice No. R. 114 of 2 February 1996, as amended by Government Notices Nos. R. 795 of 13 June 1997 and R. 402 of 5 April 2002, which are hereby withdrawn.

No. R. 423

27 Maart 2003

**WET OP DIE REGTERLIKE DIENSKOMMISSIE, 1994 (WET No. 9 VAN 1994):
PROSEDURE VAN KOMMISSIE**

Kragtens artikel 5 van die Wet op die Regterlike Dienskommissie, 1994 (Wet No. 9 van 1994), maak ek, Penuell Mpapa Maduna, Minister van Justisie en Staatkundige Ontwikkeling, hierby die besonderhede van die prosedure bepaal deur die Regterlike Dienskommissie ingevolge artikel 178(6) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), in die Bylae bekend.

P.M. MADUNA

Minister vir Justisie en Staatkundige Ontwikkeling

BYLAE

Woordomskrywing

1. In hierdie Prosedure, tensy uit die samehang anders blyk, beteken -

“die Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996);

“die instellings” die Prokureursorde van Suid-Afrika, die Black Lawyers Association, die Departement van Justisie en Staatkundige Ontwikkeling, die Algemene Balieraad

van Suid-Afrika, die National Association of Democratic Lawyers, Die Landdrosvereniging van Suid-Afrika, die Vereniging van Regsdosente en die Vereniging van Streeklanddroste van Suid-Afrika, en sodanige ander instellings as wat die Kommissie van tyd tot tyd identifiseer wat 'n belang by die werk van die Kommissie het;

keuring met "n meerderheid van stemme", keuring met die steun van minstens 'n gewone meerderheid van al die lede van die Kommissie;

"die Kommissie" die Regterlike Dienskommissie; en

"die siftingskomitee" 'n *ad hoc*-subkomitee van die Kommissie wat van tyd tot tyd saamgestel word.

Regters van die Konstitusionele Hof

2. Die prosedure vir die nominasie van kandidate vir aanstelling as regters van die Konstitusionele Hof ingevolge artikel 174(4) en (5) van die Grondwet is soos volg:

(a) Die Hoofregter moet die Kommissie in kennis stel wanneer daar 'n vakature in die Konstitusionele Hof ontstaan het of gaan ontstaan.

(b) Die Kommissie moet die vakature in die openbaar bekend maak en 'n oproep om nominasies teen 'n bepaalde sluitingsdatum doen.

(c) 'n Nominasie beoog in paragraaf (b) moet bestaan uit -

(i) 'n nominasiebrief wat die nomineerder en die kandidaat identifiseer;

(ii) die kandidaat se skriftelike aanvaarding van die nominasie;

(iii) 'n uitvoerige *curriculum vitae* van die kandidaat wat sy of haar formele kwalifikasies vir aanstelling voorgeskryf by artikel 174(1) van die Grondwet,

moet aandui, tesame met 'n vraelys opgestel deur die Kommissie en deur die kandidaat ingevul; en

(iv) sodanige verdere tersaaklike inligting aangaande die kandidaat as wat hy of sy, of die nomineerder, wil verstrek.

(d) Na die sluitingsdatum moet alle lede van die Kommissie van 'n lys van die genomineerde kandidate voorsien word, met 'n uitnodiging om -

(i) bykomende nominasies te doen, as hulle wil, en sodanige nominasies moet voldoen aan die vereistes van paragraaf (c), hierbo; en

(ii) die siftingskomitee in kennis te stel van die name van die kandidate, as daar is, wat na hulle mening beslis op die kortlys van die kandidate vir onderhoude geplaas moet word.

(e) Die siftingskomitee, wat 'n diskresie het om nominasies wat ontvang is na die bepaalde sluitingsdatum te ontvang en oorweeg, moet 'n kortlys opstel van kandidate met wie onderhoude gevoer moet word, wat alle kandidate insluit wat vir aanstelling kwalifiseer en—

(i) wat in paragraaf (d) (ii) bedoel word; of

(ii) wat na die mening van die siftingskomitee of enige van sy lede 'n werklike kans staan om vir aanstelling aanbeveel te word.

(f) (i) Die kortlys van kandidate voorgestel deur die siftingskomitee moet onverwyld aan die lede van die Kommissie voorgelê word.

(ii) Binne sewe dae na ontvangs van die kortlys kan enige lid van die Kommissie die Sekretaris skriftelik versoek om die naam van 'n kandidaat wat behoorlik genomineer is, maar wat nie by die kortlys ingesluit is nie en wat die lid sterk oortuig is gevoeg moet word by die kortlys van kandidate met wie

onderhoude gevoer gaan word, by die kortlys te voeg.

(iii) Die naam van enige sodanige kandidaat moet dan by die kortlys gevoeg word.

(g) Die kortlys moet aan die instellings versprei en in die openbaar bekend gemaak word vir kommentaar teen 'n bepaalde sluitingsdatum.

(h) Na die sluitingsdatum bedoel in paragraaf (g) word die kortlys en al die materiaal ontvang aangaande kandidate op die kortlys, aan alle lede van die Kommissie versprei.

(i) Die Kommissie moet met alle kandidate op die kortlys onderhoude voer.

(j) Die onderhoude beoog in paragraaf (i) is oop vir die publiek en die media, onderworpe aan dieselfde reëls as wat gewoonlik in geregshoue van toepassing is, en nie onderworpe aan enige vasgestelde tydsbeperking nie.

(k) Na afhandeling van die onderhoude moet die Kommissie agter geslote deure beraadslaag en indien dit gerade geag word, die kandidate wat vir aanstelling ingevolge artikel 174(4) van die Grondwet aanbeveel gaan word, keur deur konsensus of, indien nodig, met 'n meerderheid van stemme.

(l) Die voorsitter en ondervoorsitter van die Kommissie moet die Kommissie se redes vir die aanbeveling van die gekeurde kandidate saamvat en dit aanteken.

(m) Die Kommissie moet die President van die Republiek in kennis stel van die name van die kandidate wat vir aanstelling aanbeveel is en van die redes waarom hulle aanbeveel is.

(n) Die Kommissie moet die name van die kandidate wat vir aanstelling aanbeveel is, in die openbaar bekend maak.

(o) Indien verdere kandidate ingevolge artikel 174(4) van die Grondwet aanbeveel moet word, kan die Kommissie hulle na goeë dunks keur -

(i) *mutatis mutandis* uit die kandidate met wie reeds onderhoude ooreenkomstig die prosedure uiteengesit in paragrawe (k) tot (n) gevoer is; of

(ii) *mutatis mutandis* deur die hele proses ooreenkomstig die prosedure uiteengesit in paragrawe (b) tot (n) te herhaal.

Regters van die Hoë Hof

3. Die prosedure vir die keuring van kandidate vir aanstelling as regters van die Hoë Hof ingevolge artikel 174(6) van die Grondwet is soos volg:

(a) Die President van die Hoogste Hof van Appèl of verantwoordelike Regter-president moet die Kommissie verwittig wanneer daar 'n vakature in die Hoogste Hof van Appèl of enige provinsiale of plaaslike afdeling van die Hoë Hof ontstaan het of gaan ontstaan.

(b) Die Kommissie moet die instellings in kennis stel van die vakature en moet nominasies teen 'n bepaalde sluitingsdatum versoek.

(c) 'n Nominasie beoog in paragraaf (b) moet bestaan uit -

(i) 'n nominasiebrief wat die nomineerder, die kandidaat en die afdeling van die Hoë Hof waarvoor hy of sy genomineer word, identifiseer;

(ii) die kandidaat se skriftelike aanvaarding van die nominasie;

(iii) 'n uitvoerige *curriculum vitae* van die kandidaat wat sy of haar formele kwalifikasies vir aanstelling voorgeskryf by artikel 174(1) van die Grondwet moet aandui, tesame met 'n vraelys opgestel deur die Kommissie en deur die kandidaat ingevul; en

- (iv) sodanige verdere tersaaklike inligting aangaande die kandidaat as wat hy of sy, of die nomineerder wil verstrek.
- (d) Na die sluitingsdatum moet alle lede van die Kommissie voorsien word van 'n lys van die genomineerde kandidate, met 'n uitnodiging om -
 - (i) bykomende nominasies te doen as hulle wil en sodanige nominasies moet aan die vereistes van paragraaf (c) hierbo voldoen; en
 - (ii) die siftingskomitee verwittig van die name van die kandidate, as daar is, wat na hulle mening beslis op die kortlys van kandidate vir onderhoude geplaas moet word.
- (e) Die siftingskomitee, wat 'n diskresie het om nominasies wat ontvang is na die bepaalde sluitingsdatum te ontvang en oorweeg, moet 'n kortlys opstel van kandidate met wie onderhoude gevoer moet word, wat al die kandidate insluit wat vir aanstelling kwalifiseer en -
 - (i) wat in paragraaf (d)(ii) bedoel word; of
 - (ii) wat na die mening van die siftingskomitee of enige van sy lede 'n werklike kans staan om vir aanstelling gekeur te word.
- (f) (i) Die kortlys van kandidate voorgestel deur die siftingskomitee moet onverwyld aan die lede van die Kommissie voorgelê word.
 - (ii) Binne sewe dae na ontvangs van die kortlys kan enige lid van die Kommissie die Sekretaris skriftelik versoek om die naam van 'n kandidaat wat behoorlik genomineer is, maar wat nie by die kortlys ingesluit is nie en wat die lid sterk oortuig is gevoeg moet word by die kortlys van kandidate met wie onderhoude gevoer gaan word, by die kortlys te voeg.

- (iii) Die naam van enige sodanige kandidaat moet dan by die kortlys gevoeg word.
- (g) Die kortlys moet aan die instellings versprei word vir kommentaar teen 'n bepaalde sluitingsdatum.
- (h) Na die sluitingsdatum bedoel in paragraaf (g) moet die kortlys en al die materiaal ontvang aangaande kandidate op die kortlys, aan al die lede van die Kommissie versprei word.
- (i) Die Kommissie moet onderhoude met alle kandidate op die kortlys voer.
- (j) Die onderhoude beoog in paragraaf (i) is oop vir die publiek en die media, onderworpe aan dieselfde reëls as wat gewoonlik in geregshoue van toepassing is, en is nie onderworpe aan enige vasgestelde tydsbeperking nie.
- (k) Na afhandeling van die onderhoude moet die Kommissie agter geslote deure beraadslaag en, indien dit gerade geag word, die kandidaat vir aanstelling, deur konsensus of, indien nodig, met 'n meerderheid van stemme keur.
- (l) Die Kommissie moet die President van die Republiek in kennis stel van die naam van die suksesvolle kandidaat vir elke vakature.
- (m) Die Kommissie moet die naam van die suksesvolle kandidaat vir elke vakature in die openbaar bekend maak.

Oorplasing van regters van een Hoë Hof na 'n ander

4. (a) 'n Regter van 'n Hoë Hof wat na 'n ander Hoë Hof oorgeplaas wil word, kan vir sodanige oorplasing oorweeg word as 'n vakante pos in die Hof waarna hy of sy verlang om oorgeplaas te word, ontstaan en sodanige vakante pos deur die Kommissie geadverteer is.

(b) 'n Regter wat oorgeplaas wil word moet om die vakante pos aansoek doen, die standaard vraelys vir regters invul en die Kommissie moet 'n onderhoud op die normale wyse met die regter saam met die ander kandidate voer.

(c) 'n Oorplasing van sodanige regter kan slegs ten uitvoer gebring word na 'n beslissing van die Kommissie wat sodanige oorplasing aanbeveel.

President van die Grondsehof

5. Wanneer daar 'n vakature in die amp van President van die Grondsehof ontstaan, adviseer die Kommissie die President van die Republiek oor 'n kandidaat vir aanstelling as President van die Grondsehof ingevolge artikel 22(3) van die Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994), nadat die Kommissie *mutatis mutandis* ooreenkomstig die prosedure vir die keuring van kandidate vir aanstelling as regters van die Hoë Hof te werk gegaan het.

Bykomende regters van die Grondsehof

6. Die prosedure vir oorlegpleging met die President van die Republiek oor die aanstelling van bykomende regters van die Grondsehof ingevolge artikel 22(4) van die Wet op Herstel van Grondregte, 1994, word *ad hoc* in oorleg met die Kantoor van die President van die Republiek bepaal.

Afwyking

7. Die Kommissie kan van hierdie prosedure afwyk of enige afwyking daarvan kondoneer wanneer dit ook al na sy mening gepas is om dit te doen.

Intrekking

8. Hierdie Prosedure vervang die Prosedure voorgeskryf deur Goewermentskennisgewing No. R. 114 van 2 Februarie 1996, soos gewysig deur Goewermentskennisgewings Nos. R. 795 van 13 Junie 1997 en R. 402 van 5 April 2002, wat hierby ingetrek word.

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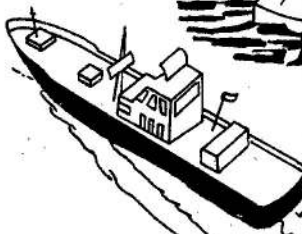
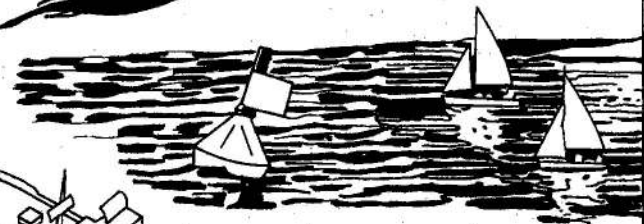
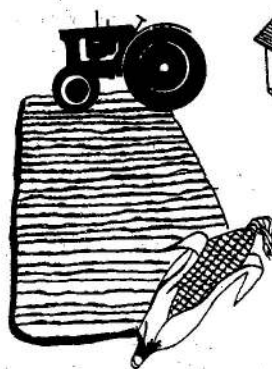
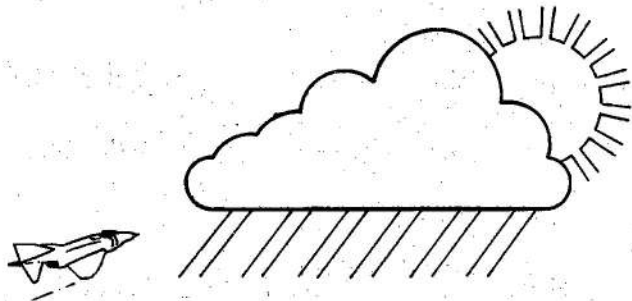
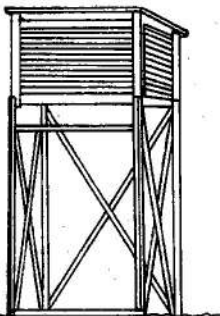
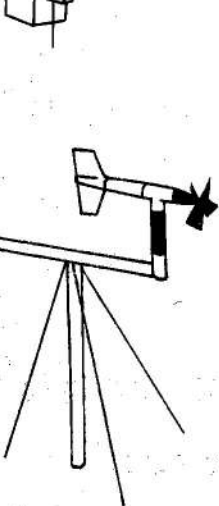
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