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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 4495 **13 March 2024**

UNIFORM GUIDELINES ON CONFERRAL OF SENIOR ATTORNEY AND SENIOR COUNSEL HONOURS ON ELIGIBLE LEGAL PRACTITIONERS

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services hereby notifies all interested parties and stakeholders that the President of the Republic of South Africa, has, for the sake of uniformity, transparency and clarity, in the exercise of his power in conferring Senior Counsel and Senior Attorney Honours, approved the Uniform Guidelines for the Conferment of Senior Counsel and Senior Attorney Honours. The Uniform Guidelines for the Conferment of Senior Advocate and Senior Attorneys Honours will take effect on the date of the publication of this Notice.

Given under my hand at Pretoria on this the 07 day of March Two thousand and Twenty Four.

MR RO LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE: 07/03/2024

UNIFORM GUIDELINES ON CONFERRAL OF SENIOR ATTORNEY AND SENIOR COUNSEL HONOURS ON ELIGIBLE LEGAL PRACTITIONERS

PREAMBLE

WHEREAS the Senior Counsel dispensation has evolved from its inception as the British legal tradition of Queen Counsel into the present day Senior Counsel legal tradition which has become part of South Africa's legal heritage;

AND WHEREAS the Constitutional Court, in the matter of *Mansingh v General Council of the Bar and Others* [2013] ZACC 40, held that the conferment of Senior Counsel honours is part of the President's responsibility to confer honours under section 84(2) *(k)* of the Constitution of the Republic of Africa, 1996 ("Constitution");

AND RECOGNISING the constitutional imperative to rationalise and transform the Senior Counsel dispensation, so as to, among others—

(a) redress the racial and gender prejudices which resulted in the exclusion and marginalisation of previously disadvantaged practitioners from equal participation in the dispensation;

(b) eradicate the developing trends whereby Senior Counsel honours has gradually veered from its noble educative objective and profound contribution to the development of jurisprudence and the legal profession broadly and gradually tend to advance self-serving and self-gratification interests which militate against access to justice;

(c) provide a legislative framework for the transformation of the dispensation to bring it in line with the values underpinning South Africa's constitutional democracy and advancement of the rule of law;

AND IN ORDER TO PROVIDE for a measure for the conferment of Senior Attorney and Senior Counsel honours to eligible legal practitioners by the President of the Republic of South Africa in terms of section 84(2)*(k)* of the Constitution;

NOW THEREFORE the Uniform Guidelines provide for the conferment of Senior Attorney and Senior Counsel honours to eligible legal practitioners.

1. Definitions

In these Uniform Guidelines—

1.1 **"Committee"** means a committee of the Council which is responsible for inviting, processing and evaluating nominations for conferment of Senior Attorney or Senior Counsel honours;

1.2 **"Council"** means the South African Legal Practice Council established by section 4 of the Legal Practice Act, 2014 (Act No. 28 of 2014);

1.3 **"Law Bodies"** means bodies or organisations, including juristic persons, who may nominate a legal practitioner for conferment of Senior Attorney or Senior Counsel honours;

1.4 **"Legal Practitioner"** means a legal practitioner who is registered and practices law under the Council;

1.5 **"Minister"** means the Minister of Justice and Correctional Services;

1.6 **"Public Sector Legal Practitioner"** means a legal practitioner who practices law under the employ of the state, organ of state or Commission established under Chapter nine of the Constitution;

1.7 **"Roll of Senior Attorney and Senior Counsel"** means the roll kept by the Council in respect of legal practitioners who are conferred Senior Attorney or Senior Counsel

1.8 **"Senior Attorney"** means the title by which an attorney has been conferred an honour of seniority by the President of the Republic of South Africa,

1.9 **"Senior Counsel"** means the title by which an advocate has been conferred an honour of Senior Counsel by the President of the Republic of South Africa, and

1.10 **"Uniform Guidelines"** means these guidelines and procedures published in the *Gazette* for conferment of Senior Attorney and Senior Counsel honours in respect of eligible legal practitioners.

2. Introduction

2.1 A Senior Attorney or Senior Counsel honour, as the case may be, is a high honour conferred on a legal practitioner by the President of the Republic of South Africa.

2.2 The Preamble to the Legal Practice Act, 2014 (Act No. 28 of 2014) (hereafter "Act") notes, amongst others, that "the legal profession is not broadly representative of the demographics of South Africa" and that "opportunities for entry into the legal profession are restricted in terms of the current legislative framework". It directs "a legislative framework for the transformation and restructuring of the legal profession into a profession which is broadly representative of the Republic's demographics under a single regulatory body".

This therefore necessitates that the process for the conferral of Senior Counsel and Senior Attorney status honours conforms with principles set out in the Preamble of the Act.

2.3 Section 5 (a) and (f) of the Act envisages the Council to:

"(a) facilitate the realisation of the goal of a transformed and restructured legal profession that is accountable, efficient and independent, and

(f) enhance and maintain the integrity and status of the legal profession".

2.4 Section 6 (1) (b) (ii) of the Act provides that in order to achieve its objects referred to in section 5, and having due regard to the Constitution, applicable legislation and the inputs of the Legal Services Ombud and Parliament, the Council must advise the Minister with regard to matters concerning the legal profession and legal practice.

2.5 The Bar Councils established in South Africa have historically discharged a responsibility, in accordance with tradition, of recommending to the Head of State individuals known to them for the conferment of Senior Counsel. The Council, the statutory regulator of the legal profession in South Africa, will therefore facilitate the processing of nominations for Senior Attorney and Senior Counsel honours, in order to ensure, as far as possible, that there is uniformity and transparency in the application of the criteria and the process for the conferment of such honours to eligible legal practitioners.

3. Application

These Uniform Guidelines apply in respect of the recommendation of candidates who have been nominated for the conferment of Senior Attorney or Senior Counsel honours.

4. Criteria for eligibility for conferment of Senior Attorney or Senior Counsel honours

The criteria listed in this paragraph are intended as guidelines in respect of the nomination of legal practitioners for the conferment of Senior Attorney or Senior Counsel honours. The criteria are not definitive or exhaustive, and the weight to be attached to individual criteria may vary. No single factor will be regarded as dominant. The criteria below apply in respect of the conferment of both Senior Attorney and Senior Counsel honours.

4.1. General criteria

4.1.1 There may be more suitable candidates in any given year that can be considered for conferment of Senior Attorney or Senior Counsel honours in accordance with the needs of the legal profession.

4.1.2 Despite the suitability of candidates, only the most meritorious candidates in any particular year can be recommended for Senior Attorney or Senior Counsel honours in that year. This means that candidates who may otherwise have satisfied the criteria may not be recommended for appointment in any particular year. If a candidate is not amongst the most meritorious candidates in a

particular year, no recommendation in respect of that candidate may be made. Accordingly, a candidate who has not been recommended in any particular year will not enjoy any preference in any subsequent year in which he or she may be nominated merely by reason of the fact that he or she had previously been nominated.

4.1.3 In deciding on the recommendations that may prudently be made for the conferment of Senior Attorney or Senior Counsel honours in any given year, due regard must be had to the racial and gender composition of the legal profession and the demographics of the country. In addition, regard may be had to the specialised fields of practice in the attorneys' and advocates' professions.

4.2 The criterion of the nature of practice

4.2.1 The practice of a candidate must be a large one comprising good quality work, having regard, in particular, to the complexity of the work. Although preference will be given to practices which embody the whole spectrum of senior work available to legal practitioners, due regard will be given to the experience, expertise and pre-eminence of a candidate in a specialised area of practice, which is not restricted to advocacy, but may encompass expertise and pre-eminence in any generally recognised area of legal practice.

4.2.2 Consideration will be given to the reality of race-based and gender-based bias or skewing of patterns of instructions given to attorneys and briefing patterns of advocates, which may tend to result in the exclusion of an otherwise worthy black and female candidates from strong representation in certain areas of practice.

4.2.3 Notwithstanding the provision of paragraph 4.2.1, no particular area or type of practice (for example, a commercial practice) will be accorded any more or any less weight than any other area or type of practice.

4.2.4 Due weight will be given to the record of service of the candidate to the legal profession and to the community at large, including, without limitation, service to and leadership positions held in professional structures, commitment to pro bono work, and community service in any respects.

4.3 The criterion of integrity and honourable conduct

A candidate must have an established reputation for personal and professional integrity. He or she must honour professional codes of conduct, be honest and straightforward in professional dealings, including dealings with the court and all other parties, and must not mislead, create a false impression or engage in unethical conduct. The candidate's disciplinary record with the Council, will be relevant in relation to the issue of integrity and honourable conduct.

4.4 The criterion of seniority

4.4.1 Seniority is an important factor to be taken into account. Although seniority is not a determinative factor, it is to be taken into consideration and weighed together with other criteria. A candidate for consideration of seniority must have at least ten (10) years of legal practice experience. In exceptional circumstances, a candidate of less than ten years legal practice experience may be considered only upon credible evidence of exceptional performance.

4.4.2 A suitable candidate must be a person of recognised ability, leadership qualities and maturity of judgment.

4.4.3 Due weight will be given to a candidate's demonstrable commitment to transformation which is objectively verifiable by reference to any relevant factors, including, but not limited to—

(a) the extent to which the candidate has actively played a mentoring role to black or female junior legal practitioners or candidate legal practitioners;

(b) the degree to which the candidate has generally participated in the enhancement of transformation through the structures of the legal profession, or any other structures recognised by the Council for that purpose, including individual, firm and group transformation initiatives; and

(c) the extent to which the candidate has involved black or female junior legal practitioners or candidate legal practitioners in matters in which the candidate has been involved.

4.4.4 Experience as a legal practitioner prior to a candidate's joining or re-joining the practising legal profession may, in appropriate circumstances, be taken into account.

4.4.5 In recognition of the fact that the best interests of the legal profession and of the administration of justice are served by a diverse leadership, considerations of race and gender will be taken into account in the selection of candidates for recommendation.

5. Procedure for nomination for Senior Attorney or Senior Counsel honours

5.1 The Council must appoint a Committee to consider and process nominations of candidates for Senior Attorney or Senior Counsel honours.

5.2 The Committee must be constituted as follows:

(a) A Chairperson designated by the Council;

(b) two practising attorneys Senior Attorneys, who are not members of the Council, designated by the Council after consulting the attorney's profession ;

(c) two practicing advocates, who are Senior Counsel and who are not a members of the Council, designated by the Council after consulting the advocates profession; and

(d) two fit and proper persons designated by the Council, who are not legal practitioners, designated by the Council after consultation with community based organisations or non-governmental organisations on community legal affairs.

5.3 The Committee may, through various forms of media, invite nominations of legal practitioners who meet the criteria for conferment of Senior Attorney and Senior Counsel honours.

5.4 The invitations for nominations for Senior Attorney and Senior Counsel honours must set out in detail, the procedure and the deadline for submission of nominations.

5.5 Nominations may be made by any interested person, excluding an organ of state or government entity.

5.6 Public sector legal practitioners are eligible for nomination for conferment of Senior Attorney or Senior Counsel honours.

5.7 Every nomination must be accompanied by a statement by the nominating person, entity or organisation stating reasons why the candidate should be recommended for Senior Attorney or Senior Counsel honours.

5.8 In respect of a nomination for a Senior Attorney honour, a nomination must be accompanied by a statement on the nomination form which contains the following information:

(a) The date of admission as an attorney and date on which the candidate commenced practising as an attorney;

(b) any previous experience of the candidate as a practising legal practitioner;

(c) details of the candidate's practice as an attorney, with particular reference to the experience and expertise of the candidate in a specialised field of practice;

(d) if the candidate has right of appearance in the High Court and claims specialist knowledge and experience in the field of advocacy, the candidate should must provide the information referred to in paragraphs (a), (b) and (c);

(e) an analysis of the type of work the candidate has done over the previous five years, and candidates are required to indicate approximately what percentage of their practice was constituted by each type of work;

(f) full particulars of the five most complex matters handled by the candidate in the previous five years must be provided and, where confidentiality is required, the names of the client and other matters must be omitted;

(g) particulars of any experience outside the practice of an attorney which the candidate regards as relevant;

(h) particulars of leadership positions which the candidate has held, both within the legal profession and outside the profession; and

(i) particulars of the candidate's pro bono activities and his or her service to the community; and

(j) particulars of all facts which may reasonably influence the decision of the Committee.

5.9 In the case of a nomination for a Senior Counsel honour, a nomination must be accompanied by a statement on the nomination form which contains the following information:

(a) The date of admission as an advocate and date on which the nominee commenced practising as an advocate;

(b) any previous experience of the nominee as a practising legal practitioner;

(c) how often the nominee has appeared in the Supreme Court of Appeal, the Constitutional Court and the Labour Appeal Court during the previous five years, with particulars of each such matter;

(d) a list of all reported matters in which the nominee has appeared;

(e) a list of matters in which the nominee has, in the past three years, been led by a Senior Counsel, acted on his or her own against a Senior Counsel, or led a junior advocate in a matter, in which case the nominee must give full particulars of—

(i) when each matter was heard;

(ii) the nature of the matter;

(iii) the identity of the Senior Counsel concerned; and

(iv) where the candidate has led a junior advocate, who the junior

advocate was;

(f) full particulars of the five most complex matters handled by the candidate in the previous three years must be provided and, where confidentiality is required, the names of the client and other parties must be omitted;

(g) particulars of any experience outside the practice of an advocate which is regarded to be relevant;

(h) particulars of leadership positions which the candidate has held, both within the legal profession and outside the profession;

(i) particulars of the candidate's pro bono activities and his or her service to the community; and

(j) any other information which is considered relevant for the conferment of Senior Counsel honours.

5.10 The Committee must—

(a) invite comments of the Chairperson of the Provincial Council in which the nominated candidate is registered; and

(b) through various forms of media, invite comments from law bodies institutions and members of the public concerning the suitability of any candidate who has been nominated for Senior Counsel or Senior Attorney as the case may be.

5.11 The Chairperson must immediately provide particulars of any positive or negative comment which has been received in respect of a candidate to the candidate concerned. The nominee will be entitled to comment thereon in writing within seven days, or within such further period as the Chairperson of the Committee may allow.

5.12 As soon as it is reasonably possible, the Chairperson must convene a meeting of the Committee. The quorum for the meeting will be a majority of its members.

5.13 Every candidate will be entitled, on request, to address the Committee, and the Committee may itself require any candidate or nominating legal practitioner to appear before the Committee to provide further information or to discuss considerations which may count against the candidate.

5.14 The members of the Committee, and any persons who appeared before the Committee, may not disclose anything which was said or which took place at that meeting. The meeting of the Committee will be closed to the public, unless the candidate agrees otherwise.

5.15 Decisions of the Committee are taken by majority vote. In the event of a deadlock, the Chairperson will have a casting vote.

5.16 After consideration of the applications with reference to the criteria referred to in paragraph 2 each member of the Committee will disclose his or her order of preference of the candidates orally to the Chairperson. The Chairperson will keep a record of the order of preference so disclosed and will determine, with reference thereto, the Committee's order of preference of candidates. The Committee's order of preference of candidates will determine which candidates will be recommended for the conferment of Senior Attorney or Senior Counsel honours.

5.17 As soon as possible after the meeting of the Committee, the Chairperson must inform the Council of its recommendation and provide reasons for or against conferment of Senior Attorney or Senior Counsel honours.

5.18 The Council must inform nominees of the decision of the Committee, in writing, and the reasons for the decision. No further particulars may be conveyed to

the candidate.

5.19 The decision of the Committee is final and there will be no debate with the candidate or with any other person.

5.20 As soon as possible after the candidates have been informed of the decision of the Committee, the Council must—

(a) publish the names of candidates who will be recommended to the President for conferment of Senior Attorney or Senior Counsel honours; and

(b) submit the names of the recommended candidates, in order of seniority, and a *curriculum vitae* of no longer than two pages of each recommended candidate to the Judge President in the Division where the recommended candidate practises.

5.21 The Judge President, upon receiving the recommended candidates for conferment of Senior Attorney or Senior Counsel, must submit the recommendations with his or her comments to the Minister.

5.22 The Minister must, upon considering the recommendation of the Council and the views of the Judge President of the Division concerned, submit a report with a recommendation to the President for conferral of Senior Attorney or Senior Counsel honours.

5.23 If the Minister, upon considering the report of the Council and the views of the Judge President, has any reservation about any of the recommended candidate for conferral of Senior Attorney or Senior Counsel honours, he or she may refer the matter back to the Council to address any such reservation.

5.24 The President may, upon considering the recommendation of the Minister, confer a Senior Attorney or Senior Counsel honour on the candidate so

recommended;

5.25 The Council must maintain a roll of Senior Attorneys and Senior Counsels, in order of seniority, who have been conferred Senior Attorney and Senior Counsel honours.

6. Date of effect

The Uniform Guidelines takes effect on publication in the *Gazette*.

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