

JUDICIAL SERVICE COMMISSION
PROCEDURES FOR SHORTLISTING, INTERVIEWING AND RECOMMENDING
CANDIDATES FOR JUDICIAL APPOINTMENT
AND REGARDING BREACHES OF MEMBERS' DUTIES OF
CONFIDENTIALITY, LAW AND ETHICAL STANDARDS

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Preamble

- 1 Section 178 of the Constitution provides for the establishment of the Judicial Service Commission (**JSC**), a body that has powers and functions assigned to it in the Constitution and in the National Legislation.
- 2 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.
- 3 In accordance with the above provisions, on 29 March 2018 the Minister published the particulars of the JSC's procedure in the Government Gazette, No. 41547.
- 4 The JSC has reviewed and updated the aforesaid procedure. This document sets out the JSC's revised and updated procedure, which replaces and withdraws the previous procedure.
- 5 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 this procedure.
- 6 This procedure also includes the JSC's approach to breaches of its members duties of confidentiality and their ethical duties.

Vacancies and nominations

- 7 The Head of each Court shall inform the JSC when a vacancy occurs or will occur in his or her Court.
- 8 The JSC shall announce the vacancy publicly and call for nominations by a specified closing date.
- 9 A nomination shall consist of:

- 9.1 A letter of nomination which identifies the person making the nomination and the candidate.
- 9.2 The candidate's written acceptance of the nomination.
- 9.3 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.
- 9.4 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

- 10 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.
- 11 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:
 - 11.1 the candidate has submitted the required documentation,
 - 11.2 the recommendation is properly motivated, and
 - 11.3 there is sufficient consensus in the Screening Committee that the candidate is suitable for appointment.
- 12 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.

- 13 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).
- 14 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

- 15 The shortlist shall be published for comment by a specified closing date.
- 16 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

- 17 The JSC shall interview all shortlisted candidates (unless the candidate withdraws his or her candidacy).
- 18 The interviews for each Court shall be conducted separately.
- 19 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.
- 20 The interviews shall be open to the public and the media.

Confidential deliberations

- 21 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.
- 22 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.
- 23 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

- 24 Voting shall be conducted by way of secret ballot.
- 25 Each member of the JSC present during the interviews and the deliberations may cast a vote on a “**per candidate**” basis. This means that:
 - 25.1 A member may vote for a candidate if they consider that the candidate should be recommended for appointment.
 - 25.2 By not voting for a candidate, the member has expressed his or her view that the candidate should not be recommended for appointment.
 - 25.3 The number of votes that a member may cast is not limited to the number of vacancies.
- 26 A candidate must achieve a majority of votes, failing which he or she cannot be recommended for appointment.

- 27 **A majority of votes** is calculated with reference to the JSC's full complement of members as follows:
- 27.1 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
- 27.2 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.
- 28 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.
- 29 Should a vacancy remain due to some or all of the candidates not achieving a majority of votes:
- 29.1 The Chairperson may invite the JSC to engage in further deliberations in relation to those of the candidates that did not achieve a majority.
- 29.2 Those of the candidates that did achieve a majority should not be reconsidered in this second process, and should be recommended for appointment.
- 29.3 The deliberations and the second round of voting should be conducted as set out above, *mutatis mutandis*.
- 29.4 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.

30 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:

30.1 The Chairperson may invite the JSC to again vote for those candidates that achieved a majority.

30.2 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.

30.3 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

31 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.

32 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.

33 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.

33.1 If there is one vacancy, four names are required; if there are two vacancies, five names are required, and so on.

33.2 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:

33.2.1 from the candidates already interviewed; or

33.2.2 by repeating the process as set out above, commencing with the publication of the vacancies and the call for nominations.

- 34 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

- 35 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.
- 36 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.
- 37 A transfer of such Judge may only be effected after a decision of the JSC recommending such transfer.

Breach of confidentiality and ethical standards

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

39 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

40 These legal, ethical and professional standards are set out in *inter alia*:

40.1 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).

40.2 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

40.3 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

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].

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

³ Article 6.

⁴ Government Gazette 21399 of 28 July 2000.

40.4 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

40.5 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

41 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

Approved: 13 April 2026

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*”.

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.