

**LEGAL PRACTICE COUNCIL
NOTICE 208 OF 2020**

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**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL
NOTIFICATION IN TERMS OF PARAGRAPH 8.2 OF THE CODE OF CONDUCT
PUBLISHED IN TERMS OF SECTION 36(1) OF THE LEGAL PRACTICE ACT 28 OF
2014**

Notice is hereby given that the South African Legal Practice Council ("Council") has prepared draft criteria and procedures for the recommendations of conferment of Senior Counsel and Senior Attorney status in terms of paragraph 8.2 of the Code of Conduct, published in terms of Section 36(1) of the Legal Practice Act 28 of 2014 in Government Gazette 42337, read with Government Gazette 42364, of 29 March 2019, for comment.

All interested persons are called upon to comment to the Council in writing on the draft criteria and procedures within a period of 30 days from the date of publication of this notice.

All comments must be sent by email to rules@lpc.org.za.

SIGNED AT PRETORIA THIS 18th DAY OF MARCH 2020

Ms Hlaleleni Kathleen Dlepu

Chairperson: Legal Practice Council

South African Legal Practice Council
Conferment of Senior Counsel and Senior Attorney status

Regulations regarding criteria and procedures

1. Introduction and preamble

- 1.1 These guidelines and procedures are established by the Legal Practice Council (the Council) for the information and assistance of practising legal practitioners who wish to apply for the conferment of Senior Counsel or Senior Attorney status.
- 1.2 The status of Senior Legal Practitioner is a high honour conferred on an individual.
- 1.3 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, has assumed responsibility for the processing of applications for Senior Legal Practitioner status to ensure as far as possible that there is uniformity and transparency in the application of the criteria and the process, and henceforth all applications for Senior Legal Practitioner status must be addressed to the Council for processing.

2. Definitions

For purposes of these guidelines and procedures -

- 2.1 **"the Committee"** shall mean the Senior Legal Practitioner Committee established by the Council for the purpose of receiving and evaluating applications for Senior Counsel or Senior Attorney status by practising legal practitioners, which applications may be received directly from legal practitioners or through the medium of Provincial Councils, any professional body of legal practitioners of which applicants may be members, through any other public body which is representative of members of the community, or through any other entity determined from time to time by the Council;
- 2.2 **"Senior Counsel"** means the status of Senior Counsel, a term historically used to describe the title conferred on senior advocates who have achieved that status in the judgment of their peers, which status will be deemed to have been conferred on an advocate only on his or her appointment as Senior Counsel by the President of the Republic of South Africa;

- 2.3 **"Senior Attorney"** means the newly established status of Senior Attorney, a term to describe the title to be confirmed on Senior Attorneys who have achieved that status in the judgment of their peers, which status will be deemed to have been conferred on an attorney only on his or her appointment as Senior Attorney by the President of the Republic of South Africa;
- 2.4 **"Senior Legal Practitioner"** means a Senior Counsel or a Senior Attorney, as the context requires.

3. **Criteria by which candidates for the conferment of Senior Legal Practitioner status are judged**

The criteria listed in this paragraph are intended as guidelines in respect of the nomination of legal practitioners as persons appropriate for the conferment of Senior Legal Practitioner status. These guidelines 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, which are time-honoured and have been applied for many years in relation to considerations for the conferment of Senior Counsel status, and will henceforth also be applied in relation to the conferment of Senior Attorney status, are as follows:

- 3.1 General criteria
- 3.1.1 There may be more suitable candidates in any given year than can be accommodated, having regard to the concept of Senior Legal Practitioner and the needs of the practising legal profession.
- 3.1.2 It follows that only the most meritorious candidates in any particular year can be recommended for Senior Legal Practitioner status in that year. This means that persons 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 will 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.
- 3.1.3 In deciding on the recommendations that may prudently be made for the conferment of Senior Legal Practitioner status in any given year, due regard must be had to the racial and gender composition of the body of Senior Legal

Practitioners amongst advocates and attorneys and the demographics of the country. In addition, regard may be had to the specialised fields of practice in the advocates' and attorneys' professions.

3.2 The criterion of the nature of practice

3.2.1 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.

3.2.2 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 women candidates from strong representation in certain areas of practice.

3.2.3 Despite what is said in paragraph 3.2.1, 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.

3.2.4 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.

3.3 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 indulge in underhand dealing. The candidate's disciplinary record with the Council, the former Law Societies or with any voluntary association of legal practitioners of which he or she is a member, will be relevant in relation to the issue of integrity and honourable conduct.

3.4 The criterion of seniority

- 3.4.1 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. Candidates who have had less than 12 years in practice as a legal practitioner will not ordinarily be considered for the conferment of Senior Legal Practitioner status.
- 3.4.2 Suitability for Senior Legal Practitioner status is too intangible a notion to be regulated entirely by listed criteria. A suitable candidate must be a person of recognised ability, leadership qualities and maturity of judgment.
- 3.4.3 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:
- the extent to which the candidate has actively played a mentoring role to black or women junior legal practitioners or candidate legal practitioners;;
 - 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;
 - the extent to which the candidate has involved black or women junior legal practitioners or candidate legal practitioners in matters in which the candidate has been involved.
- 3.4.4 Experience as a legal practitioner prior to a candidate's joining or rejoining the practising legal profession may in appropriate circumstances be taken into account.
- 3.4.5 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.

4. Procedure for application for Senior Legal Practitioner status

- 4.1 The Committee will consider and process nominations of candidates for Senior Legal Practitioner status. The Committee shall consist of legal practitioners (who

need not be members of the Council), of whom one half must be practising advocates and one half must be practising attorneys; provided that where the candidate is a candidate for Senior Counsel status the majority of the members of the Committee who deliberate on the matter must be advocates, and where the candidate is a candidate for Senior Attorney status the majority of the members of the Committee who deliberate on the matter must be attorneys.

- 4.2 On or before 31 March of each year the Council shall publish a notice to all practising legal practitioners in which the names of the members of the Committee are made known and nominations for candidates for Senior Legal Practitioner status are called for.
- 4.3 Nominations must be submitted to the Committee on or before 1 June of the relevant year, and may be received through any entity, whether a statutory body or a voluntary association, which represents the interests of legal practitioners, or from legal practitioners. Every nomination must be signed by at least two legal practitioners of at least 10 years standing as practising legal practitioners.
- 4.4 Every nomination must be accompanied by a statement by the nominating legal practitioners in which the criteria mentioned in paragraph 3, and any other reasons why they consider the candidate should be recommended for Senior Legal Practitioner status, are addressed. Candidates may also attach written representations to advance their candidacy.
- 4.5 Candidates must attach a statement to the nomination form which contains the following information:
 - 4.5.1 In the case of an application for Senior Counsel Status -
 - 4.5.1.1 the date of admission as an advocate and date on which the candidate commenced practising as advocate;
 - 4.5.1.2 any previous experience of the applicant as a practising legal practitioner;
 - 4.5.1.3 how often the candidate 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;
 - 4.5.1.4 a list of all reported matters in which the candidate has appeared;
 - 4.5.1.5 a list of matters in which the candidate has in the past three years -

- been led by a Senior Counsel;
- acted on his or her own against the Senior Counsel;
- led a junior in a matter.

Candidates are required to give full particulars of when each matter was heard, the nature of the matter, the identity of the Senior Counsel concerned and, where the candidate has led a junior, who the junior was;

- 4.5.1.6 an analysis of the type of work the candidate has done over the past three years. Candidates are required to indicate approximately what percentage of their practice was constituted by each type of work;
- 4.5.1.7 whether the candidate regards himself or herself as an expert or specialist in a particular field of practice. If so, full particulars must be provided;
- 4.5.1.8 full particulars of the five most complex matters handled by the candidate in the previous three years must be provided;
- 4.5.1.9 where confidentiality is required, the names of the client and other parties must be omitted;
- 4.5.1.10 particulars of any experience outside the practice of an advocate which the candidate regards as relevant;
- 4.5.1.11 particulars of leadership positions which the candidate has held, both within the legal profession and outside the profession;
- 4.5.1.12 particulars of the candidate's pro bono activities and his or her service to the community;
- 4.5.1.13 particulars of all facts which might reasonably influence the decision of the Senior Counsel Committee.
- 4.5.2 in the case of an application for Senior Attorney status -
 - 4.5.2.1 the date of admission as an attorney and date on which the candidate commenced practising as an attorney;

- 4.5.2.2 any previous experience of the applicant as a practising legal practitioner;
- 4.5.2.3 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. 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 provide the information referred to in paragraphs 4.5.1.3, 4.5.1.4 and 4.5.1.5;
- 4.5.2.4 an analysis of the type of work the candidate has done over the previous five years. Candidates are required to indicate approximately what percentage of their practice was constituted by each type of work;
- 4.5.2.5 full particulars of the five most complex matters handled by the candidate in the previous five years' must be provided;
- 4.5.2.6 where confidentiality is required, the names of the client and other matters must be omitted;
- 4.5.2.7 particulars of any experience outside the practice of an attorney which the candidate regards as relevant;
- 4.5.2.8 particulars of leadership positions which the candidate has held, both within the legal profession and outside the profession;
- 4.5.2.9 particulars of the candidate's pro bono activities and his or her service to the community;
- 4.5.2.10 particulars of all facts which might reasonably influence the decision of the Committee.
- 4.6 A soon as possible after 1 June of the relevant year the chairperson of the Committee shall publish a notice to all practising legal practitioners and to the public at large in which -
 - 4.6.1 the names of the nominated candidates in order of seniority are made known, with separate lists for advocates and attorneys;
 - 4.6.2 attention is drawn to the fact that all documentation which has been submitted in support of a candidate will be open for inspection at the offices of the Council during normal office hours;

- 4.6.3 practising legal practitioners are invited to submit written comment in respect of the suitability of any candidate to the Chairperson of the Committee on or before 30 June of the relevant year; the notice must state that only specific comments regarding the suitability of the candidate for Senior Legal Practitioner status will be considered.
5. The Chairperson of the Committee shall forthwith provide particulars of any positive or negative comment which has been received in respect of a candidate to the candidate concerned. The candidate will be entitled to comment thereon in writing within seven days, or within such further period as the Chairperson of the Senior Counsel Committee may allow.
 6. As soon as possible after 30 June of the relevant year the Chairperson of the Committee will convene a meeting of the Committee. A quorum for the meeting will be a majority of members.
 7. 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.
 8. 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.
 9. Decisions of the Committee are taken by majority vote. In the event of a deadlock the Chairperson will have a casting vote.
 10. 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 to fill the need for new Senior Legal Practitioner status.
 11. As soon as possible after the meeting of the Committee the Chairperson must inform each successful and each unsuccessful candidate in writing of the Committee's decision with reasons for the decision. No further particulars may be conveyed to the candidate.

12. The decision of the Committee is final and there shall be no debate with the candidate or with any other person.
13. As soon as possible after the candidates have been informed of the decision of the Committee -
 - 13.1.1 the Chairperson shall publish a notice to legal practitioners and to the public in which the names of the successful candidates are made known;
 - 13.1.2 every successful candidate must provide the Chairperson with a *curriculum vitae* no longer than two pages.
14. The Chairperson shall forward the curricula vitae of the successful candidates to the Judges President of the divisions of the High Court where the candidates practise, under cover of a letter which contains -
 - 14.1 the full names of the successful candidates in order of seniority, with separate lists of advocates and attorneys;
 - 14.2 the admission date of each successful candidate;
 - 14.3 the period which each successful candidate has been in practice as a legal practitioner;
 - 14.4 as an attachment, the nomination form referred to in paragraph 4.3 and all attachments to that form.
15. If a candidate is not supported by the Committee for the conferment of Senior Legal Practitioner status, the candidate may not pursue the matter in the same year. It will be regarded as unprofessional conduct if the candidate applies directly to a Judge President or the Minister of Justice and Constitutional Development.