



30 March 2012

Via e-mail: dube@concourt.org.za

The Secretariat: Judicial Service Commission
Constitutional Court
Private Bag X1
Constitutional Hill
Braamfontein
2017

Dear Sir / Madam

APPOINTMENT OF JUDGES FROM THE RANKS OF SENIOR PROSECUTORS

The Law Society of South Africa (LSSA) has considered the memoranda by Adv Smuts SC and Deputy Minister Chohan, MP attached to your letter dated 23 January 2012 and wish to comment as follows:

The LSSA has serious reservations and concerns regarding the proposal that judges be appointed from the ranks of senior prosecutors. We find fundamental flaws in the argument that, if a prosecutor has the requisite academic qualifications, he/she qualifies for consideration to be appointed on the High Court bench. It is trite that prosecutors receive training in criminal procedures and criminal proceedings. We submit that this is insufficient to render them fit and proper persons to be appointed as judges, dealing with civil and criminal matters.

On this ground alone, we cannot support the proposition in favour of judges being appointed from the ranks of senior prosecutors. Even if they undergo judicial training, their lack of practical experience in civil matters would be of concern.

Furthermore, prosecutors are in gainful employment of the State and the perception could be created that they might conduct themselves in such a way that could compromise their independence. Perceptions are very important and the LSSA regards it as undesirable for a member of the prosecutorial services to be a member of the judiciary. This offends the concept of judicial independence. A prosecutor wishing to be appointed to the bench should therefore first have to resign his position as public prosecutor.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

We respectfully submit that there is little more to add to Adv Smut's memorandum and we support his recommendation.

The LSSA wishes to thank the Commission for allowing us the opportunity to make an input.

Yours faithfully



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