



JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

**Supreme Court/Court of Appeals
(New Candidate)**

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- 1. Do you plan to serve your full term if elected?

Yes.
- 2. If elected, do you have any plans to return to private practice one day?

No, but I certainly would if I could no longer serve as a judge.
- 3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes.
- 4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

For trial court judges, *ex parte* communications regarding scheduling and other administrative matters are at times necessary, particularly for a Chief Administrative Judge. On the Circuit Court, my office generally handled such scheduling by e-mail, with copies sent to all attorneys and unrepresented parties involved in a matter. Substantive *ex parte* communications are generally forbidden; however, in accordance with Canon 3(B)(7)(d), I did confer with attorneys (and occasionally, parties) to assist them with working toward settlement of matters pending before me when all parties consented. Additionally, when I was Chief Administrative Judge for General Sessions in the Ninth Circuit, I handled funding requests from attorneys representing indigent defendants. These requests were usually addressed *ex parte*. During this same time period, I once met *ex parte* with a defense attorney who was experiencing a mental health crisis during a hearing in a case in which the criminal defendant was facing a

murder charge. With the consent of the deputy solicitor handling the case, I met with the attorney in a conference room outside the courtroom. We then went back on the record, rescheduled the hearing, and later took steps to seek help for the attorney.

Ex parte communications are not necessary for scheduling and administrative purposes at the Court of Appeals as our Clerk's Office handles all scheduling of arguments. Although there are certain limited situations at the appellate level for which the rules reference *ex parte* communications, I have yet to encounter such a situation.

5. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

I would look to Canon 3(E), which addresses situations in which a judge's impartiality might reasonably be questioned. Generally, I would recuse myself unless the request was not reasonable. In those situations, recusal simply pushes a problem litigant off for another judge to have to handle. Canon 3(B) requires a judge to hear and decide assigned matters except in those cases in which disqualification is required. I have not found recusal questions to be an issue at the Court of Appeals, but we did have some interesting parties and motions in Circuit Court.

Where there is no recusal motion, but I disclose something that might give an appearance of bias, I use the process of Canon 3E(F) for remittal of the disqualification. I automatically recuse myself from all matters involving my former law partner and her firm. My sister and several first cousins are also attorneys; I do not hear their cases. For these cases, my disqualification is noted in our C-Track case management system, and the case is not assigned to me. If I discover a conflict when reading the materials in an assigned case, I email our Clerk of Court and she finds a substitute judge.

6. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

Many of my friends are attorneys, and we enjoy ordinary social hospitality. My attorney friends do not give me gifts, but I do accept invitations to attend dinners and conferences hosted by attorneys and organizations such as the South Carolina Bar Association, South Carolina Association for Justice, South Carolina Defense Trial Attorneys Association, Injured Workers' Advocates, and South Carolina Chapter of the American Board of Trial Advocates (ABOTA). I report any accommodations or conference fees provided by such groups on my annual Rule 501, SCACR, disclosure report. I follow Canon 4(D), which addresses ordinary social hospitality,

when I am invited to attend an event where I, or others, might question whether my attendance is appropriate. If I continue to have a concern about an event, I generally will decline the invitation. That being said, I think it is important that judges not isolate themselves from the legal community (and the community at large). We need to be accessible to attorneys and others to hear their input and concerns.

7. How would you handle a situation in which you became aware of misconduct or appearance of infirmity of a lawyer or of a fellow judge?

My response would depend upon whether I had actual knowledge of a violation raising a substantial question as to the fitness or trustworthiness of the lawyer or judge or whether I had simply received information suggesting that a violation or problem might have occurred. Under Canon 3(D), I would “take appropriate action” depending on the specifics of the situation.

Two such situations occurred while I was Chief Administrative Judge for General Sessions in Charleston and Berkeley Counties. In the first instance, I halted a guilty plea and continued the matter when it became apparent that an elderly attorney was experiencing a cognitive problem; we reached out to the gentleman’s family to assist him, and the defendant was appointed substitute counsel. In the second situation, I met with the attorney outside the courtroom to see if she needed help with her medical issue, and we rescheduled the hearing. This meeting took place with the consent of the deputy solicitor. Lawyers Helping Lawyers stepped in before it became necessary to notify the Office of Disciplinary Counsel of any actual misconduct, and we were able to find additional counsel for the defendant.

8. Are you affiliated with any political parties, boards or commissions? If so, in what capacity are you serving?

No. Prior to my election to the Circuit Court, I served in leadership positions with my church, in the Charleston community, and for the South Carolina Bar. Under the Canons of Judicial Ethics, however, judges are not permitted to engage in political activity, assist with fundraising, or give legal advice. Thus, it is hard for me to be a useful board member, and I believe these organizations are better served by board members who are not so limited in their participation.

9. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? Please describe.

Not since my election to the Circuit Court.

10. How would you prepare for cases that were before you?

At the Court of Appeals, we receive our list of panel cases a few months before we hear the oral arguments. Initially, we do a conflict review to make sure we have no disqualification before the law clerks put their time and work into the matter. The cases assigned to our panel are distributed among my law clerks, and I let them know my early inclinations on a matter as they review and research the issues. This evolves as we all become more familiar with the case.

My law clerks and I discuss the cases and any questions they have as they prepare their bench memos. They exchange, review, and edit their draft bench memos and then send them to me for review, revising, and supplementing as needed. I review the briefs and records on appeal, and I review any significant cases relating to the issues raised. I then edit and update the bench memos and send them back to my clerks for final editing before we distribute them to our panel.

For cases assigned to our panel for which I am not the author, my review is similar, but I also review the bench memos prepared by the chambers of the authoring judge, as well as any cases and statutes I find pertinent before we have oral argument.

On the Circuit Court, we would pull the file to learn about the case and any prior motions or orders that might impact the pending issue. I reviewed the memoranda submitted by the parties and ran my own Westlaw searches to check for applicable statutory or appellate authority that the lawyers may not have provided. I found that hearings and trials ran much more smoothly when the judge was familiar with the file and applicable law.

I have sat with the Supreme Court as a substitute on several occasions when one of the justices was unable to hear a matter due to disqualification or other conflict. My preparation for these arguments is similar to my preparation for cases at the Court of Appeals.

11. What is your philosophy on “judicial activism,” and what effect should judges have in setting or promoting public policy?

“Judicial activism” is inappropriate. The role of the judiciary is limited to hearing justiciable “cases and controversies” that come before the particular court. A judge’s duty is to interpret the law, according to the Legislature’s intent, and in accordance with the United States and South Carolina Constitutions. Attempting to “legislate from the bench” is not appropriate. The primary source for the declaration of public policy in South Carolina is the General Assembly. Our “courts assume this prerogative only in the absence of legislative declaration.” *Citizens’ Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709, 713 (1925).

12. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?

As noted in my Personal Data Questionnaire, I am often asked to speak or to serve as a panelist at law-related events in our community and across the state. I participate in the Judicial Observation (JOE) Program every year and attend luncheons, dinners, and other events hosted by South Carolina legal organizations. I often participate as a judge in law school Moot Court competitions and other events, and I try to be approachable and available to attorneys and trial judges. During the early months of the pandemic, I met frequently with our Clerk of Court in Charleston and fielded questions almost daily from attorneys and judges across the State. This was a difficult time, and attorneys were confused (and frustrated) by the differing approaches various counties and individual judges took regarding the handling of hearings and docket issues. This same frustration persists with respect to protection requests across the state, and I have spoken in the past with members of the Supreme Court about this problem and, more recently, at a Bar committee meeting seeking to address the issue. It is my understanding that the Supreme Court is working on the technology for a centralized process for attorney protection requests.

From 2016-2018, I served on an ad hoc committee chaired by Judge John Geathers to streamline and update the Internal Operating Procedures of the Court of Appeals.

13. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?

No. My only child is twenty-four and does not live in South Carolina. Most of my very large family lives in the Lowcountry and other than the occasional need to remind some of them that I am not permitted to discuss politics, they are very supportive. It can be a little awkward when I have to explain to someone why I cannot attend a particular event or participate with a fundraising effort, but people are generally pretty understanding about this. I am also careful about making sure I understand the nature of some of the events friends invite me to attend (i.e., nothing partisan or political, nothing that would require me to fundraise, nothing concerning under the Canons, etc.).

14. Please describe your methods of analysis in matters of South Carolina's Constitution and its interpretation by explaining your approach in the following areas. Which area should be given the greatest weight?

- a) The use and value of historical evidence in practical application of the Constitution:

South Carolina courts and the United States Supreme Court have given great weight to past practices and historical evidence when interpreting constitutional provisions. See *e.g.*, *Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995) (noting the Governor presented “overwhelming” historical evidence in his brief). I analyze such information in the context of the particular case or controversy before our Court and according to the text of the legislative enactment.

- b) The use and value of an agency’s interpretation of the Constitution:

Although we give deference to an agency’s interpretation of its own regulations, to permit an agency to interpret the Constitution would allow improper executive encroachment into judicial responsibilities. This would implicate (and likely violate) the “separation of powers” doctrine. See S.C. Const. Art. I, Section 8. Nor may an agency overstep the powers that the General Assembly has lawfully delegated to it.

- c) The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

In interpreting the Constitution (or a statute), the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. This begins with an examination of the text of the statute or constitutional language. Committee minutes are not controlling as to the intent behind, or the interpretation of, the Constitution, but they may be of significant use in providing historical context and interpreting ambiguous language where the text itself is unclear.

15. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

Yes. I am a sustaining member and past president of the Junior League of Charleston, Inc., which is an organization of women committed to promoting voluntarism, developing the potential of women, and improving the community through the effective action of trained volunteers. Its purpose is exclusively educational and charitable, and membership is open to all women.

I am also a member of the South Carolina Women Lawyers Association. In December 2019, I was honored to have the opportunity to present a group

of 2019 South Carolina applicants for admission to practice before the United States Supreme Court.

16. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

Yes.

17. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

I strive to be courteous and patient and to treat everyone with dignity and respect. While this can difficult at times because a judge must also maintain order in the courtroom, there is never an excuse for rudeness or "robitis." These rules apply twenty-four/seven, and they are important to a judge's credibility.

18. Would there be a role for sternness or anger in meetings with attorneys?

There is no role for anger, but sternness is, at times, necessary. This is less of an issue at the appellate level as the environment there is more formal than in the trial courts. Judges must recognize that even seasoned trial attorneys may react oddly to the circumstances of a difficult trial or oral argument. Court proceedings can be emotionally charged and stressful for parties, attorneys, jurors, and court staff. A judge must understand this while still maintaining control of the courtroom for purposes of decorum, to preserve the integrity of the proceeding, and to better work with court personnel to provide a safe environment for everyone involved in the process. Candor to the tribunal is critical, and sternness is sometimes required if an attorney or party persists in lacking an understanding of this.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Sworn to before me this ____ day of _____, 2022.

(Signature)

Sarah Woodard Thornton
(Print name)

Notary Public for South Carolina

My Commission Expires: _____