

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

Circuit Court
(New Candidate)

Full Name: Russell David Hilton

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1. Why do you want to serve as a Circuit Court judge?

I have always enjoyed public service and giving back to the community. I started my career as an assistant solicitor and had the opportunity to work with victims and pursue justice. When I became a solo practitioner, I continued to serve by representing indigent defendants and members of my local community on matters that sometimes would have been difficult to find an attorney for assistance. I have always taken my oath as an attorney to uphold the Constitution of this State and the United States seriously. Just as I have continuously served as a trustee and pianist, and on occasion, attorney for my church, I want to continue my public service in the legal field. Serving as a Circuit Court judge will allow me to combine all my experience to further serve the citizens and my home state of South Carolina.

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

Yes.

3. Do you have any plans to return to private practice one day?

No.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding ex parte communications? Are there

circumstances under which you could envision ex parte communications being tolerated?

Ex Parte communications are permissible and required in certain circumstances such as a motion to address issues between an attorney and a client, a request for a search warrant by law enforcement, or a request for funding. However, most of the issues that come before the court affect all the involved parties and all parties should absolutely be part of the conversation. Impermissible ex parte conversations should never be tolerated and are a violation of Judicial Canon 3 and the Rules of Professional Conduct. In modern times, with email communication, virtual capabilities, and telephone, it is a rare circumstance that ex parte communication would ever be necessary, even if it is permissible, except in those situations where it is required by rule or statute.

6. 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 give great deference to the party requesting my recusal. In accordance with Judicial Canon 2, a judge should always avoid the "appearance of impropriety". If the disclosure truly had the appearance of bias or would create a reasonable perception of impropriety, then it is the appearance that matters to the parties, not my belief that I could be impartial. As such, I would grant the motion.

7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

If there were a genuine concern from a party about the appearance of impropriety, then I would recuse myself to avoid even the appearance of it as required by the Judicial Canon 2. I would further encourage my spouse to abstain from being involved in activities that would likely create a conflict or the appearance of impropriety.

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

Judicial Canon 4 allows for the acceptance of customary gifts and hospitality from family and close friends. However, there are no circumstances where any non-nominal gift or hospitality should be accepted by a sitting judge from

someone with the intent to sway or influence the judge or in circumstances that create the appearance of impropriety, or that are not consistent with the existing relationship as outlined in the Canons. In those circumstances, I would respectfully decline or return the gift and inform them that the ethical rules do not allow me to accept it.

9. 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?

Depending on the conduct of the lawyer or judge, I would handle the situation as necessary. For example, if an attorney was engaging in unintentional misconduct that did not rise to the level of causing concern for his or her ability to practice law, such as a young attorney attempting to communicate *ex parte*, I would inform the attorney of the violation, join the other party to the communication, inform the opposing party of the content of the communication, and request that all parties be joined on all communication from that point forward. If it were an egregious violation by an attorney that did cause concern as to the lawyer's fitness, I would report the attorney to the Office of Disciplinary Counsel and/or any other entities or even law enforcement, as necessary. Judicial Canon 3 requires that a report be made to the Office of Disciplinary Counsel or "appropriate authority" when the information is such that it raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer.

Judicial Canon 3 requires that a report be made to the Office of Disciplinary Counsel or "appropriate authority" when the information is such that it raises a substantial question as to the other judge's fitness for office. If the misconduct was from a fellow judge and did not rise to the level of a "substantial question", I would try to have a conversation to have the judge remedy the issue, and then, if unresolved or required, report the judge to the Office of Disciplinary Counsel and/or any other necessary disciplinary body as required by Judicial Canon 3.

10. 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.

No.

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

I have supported candidates for state and local political offices with fundraising activities. I have also supported my local church with fundraising activities throughout the years.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

No.

13. If elected, how would you handle the drafting of orders?

I would request the prevailing party to submit a draft order to which I would modify as necessary. Other times, a form order may be sufficient, and I would utilize a form order where appropriate. However, there will certainly be times that require me to draft an order which I would do with the assistance of a law clerk or staff member. Drafting orders has become routine in my present law practice and can usually be completed in a relatively short period of time.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

An effective calendaring system is essential to meeting deadlines. A daily calendar review for the upcoming day, week, and month has been part of my private practice since 2013 and is one of the most effective ways of seeing what is upcoming and making sure all deadlines are met. Additionally, effective communication with staff is important to ensure that everyone is aware of impending deadlines.

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

I do not believe that judges should be in the business of creating policy or substituting their ideas for that of the legislature. The role of the judiciary should be interpreting and implementing the plain meaning of the law already enacted.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

I would be more than willing to participate in CLEs or speak to groups about

the law. Additionally, there have recently been efforts by the Supreme Court to eliminate the criminal backlog. I believe that being available to parties, especially the Solicitor and Public Defender's offices, could be extremely effective in resolving the backlog. Often, judges are, at least seemingly, only available during a term of court. I think having the opportunity to meaningfully discuss issues in cases outside of a scheduled court term could be extremely helpful to resolve some of the more complex issues that take large amounts of court time, especially in criminal court. I believe setting aside out-of-court time, when possible, to handle matters that can be resolved via recorded virtual hearing, would effectively add in-court time by resolving the less complicated matters before in-person court begins, thus leaving more time for the more complicated issues.

17. 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 address this?

I do not feel that the pressures of serving as a judge would strain personal relationships. Many of my closest friends are not attorneys or in the legal field, and I do not believe a judicial position would affect those relationships. I have no children and my wife has worked with me as my paralegal for the past eleven years. She and I have managed a successful law practice, and I believe serving as a judge would give her the opportunity to pursue other interests.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

- a. Repeat offenders:

Recidivism is a real problem in this State (and others). Obviously, the nature of the crime and the circumstances would come into consideration, but having prior convictions would definitely be a factor that would likely warrant an enhanced sentence.

- b. Juveniles (that have been waived to the Circuit Court):

While youthfulness would likely be a mitigating factor, juveniles that have been waived to Circuit Court are usually individuals who have committed a serious* offense. This category of offenders, by definition, requires careful consideration as to why the offense occurred and a sentence

imposed to protect the public and hopefully correct the behavior. Many times, these offenders qualify for a Youthful Offender Act sentence, but many times the seriousness of the offense would render the Youthful Offender Act inappropriate.

*Not necessarily "serious" as defined by SC Code, Section 17-24-45.

c. White collar criminals:

Stealing with a pen can be as devastating as a burglary. For example, stealing someone's identity can create effects that last for decades for a victim. I believe stealing is really the same whether it is someone's car that is stolen or money from their account.

d. Defendants with a socially and/or economically disadvantaged background:

I do not believe that growing up underprivileged is an excuse to later use when a crime is committed. In some circumstances, it could certainly be considered as an explanation or mitigation, depending on the offense. I do not believe, for example, that severely assaulting someone is somehow mitigated or excused by a socially or economically challenged upbringing.

e. Elderly defendants or those with some infirmity:

This category is much more difficult to provide an answer. "Elderly" people were raised in an environment and time where things were very different than it is today. I have to say that the specific crime would be a large factor in deciding a sentencing philosophy. As an example, I do not believe an elderly person who carries a gun unlawfully would likely be in the same sentencing category as a 20-year-old who has a gun unlawfully, depending on the mindset of the defendant. Contrarily, I would certainly find it more aggravating that an elderly person contributed to the delinquency of a minor as compared to a 20-year-old.

Regarding an infirmity, I do believe there could be mitigation if the infirmity related to the crime. For example, a person with diminished mental capacity has to be afforded some leeway, and I believe the mitigation should be considered in that criminal behavior is almost entirely about bad judgment. Mental health treatment or counseling can certainly be ordered as part of any sentence where appropriate. In referring to diminished mental capacity, I am referring to those who have met the standards of competency, but function at a below average level.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

I would disclose the interest and allow the parties an opportunity to discuss the matter outside of my presence and give them the choice to proceed as long as I personally did not feel the interest would cause me to be impartial and as long as the parties agreed to waive the conflict. If either of the parties did not want to proceed, then I would reschedule the matter in front of a different judge. If the matter were of an emergency nature, I would either continue the matter at the parties' request, or temporarily decide the matter if required, with a new hearing to be held as soon as practical in front of another judge.

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

Yes.

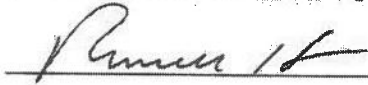
22. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

The appropriate demeanor for a judge is one where all parties, including any victims, feel like they have had an opportunity to be heard and that everyone is on an equal level. There are times to be firm, times to stop someone from talking, and times to sentence someone to significant prison time. However, all those things can be done without being rude, curt, difficult or by making someone feel inferior. I have tried cases and been in front of judges who feel the need to scream, call people out, impose senseless and arbitrary court decorum rules, and truly attempt to display the extent of the genuine authority that comes with the position. Almost always, however, that authority should only be demonstrated by the existence of the position itself, and not the person wearing the robe. Judicial Canon 3 requires that a judge shall be "patient, dignified and courteous". I believe that is a perfect description of the appropriate demeanor for a judge.

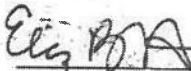
23. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

There will be times when anger will arise just as does happiness, sadness, etc. The important concept is to not act on the anger and especially not to make decisions based on anger or allow the anger to overcome logic, equity, or law. In my private practice, I have always waited to respond to an email or refrained from sending a letter or making a call if I am angry. Sometimes it takes several minutes, and sometimes it might take a day or so, but the anger will subside and then a rational response can be made. Anger and bad decisions go hand in hand. If anger is a present feeling, then that is a time to take a matter under advisement and potentially consult with a fellow judge before deciding. It is never appropriate to decide a matter for any party or attorney out of anger or for a judge to conduct himself or herself inappropriately out of anger or otherwise. The Rules of Professional Conduct and standards for courtroom decorum prohibit attorneys from displaying anger, and the same standards should be exhibited by judges as well.

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 10 day of July, 2023.



(Signature)

Elizabeth B. Hilton
(Print Name)

Notary Public for South Carolina

My Commission Expires: 4/11/33