

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

Circuit Court
(New Candidate)

Full Name: James Emerson Smith Jr

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

As a Soldier, attorney, and lawmaker, I dedicated my life to serving, protecting, and defending the rule of law and justice for all in South Carolina and our Nation. I am so grateful for the opportunity I have had to serve clients, large and small, wealthy and poor, working in the biggest and smallest firms in our state for nearly 28 years as lead counsel in criminal, civil and administrative cases in federal and state courts at trial and on appeal. For 22 years, I was blessed to serve in the South Carolina House of Representatives enacting laws to serve all of South Carolina. When called, like many others, I went to war to protect the rule of law and our freedoms. With the love and support of my family, friends, and colleagues, I am seeking to continue to serve the rule of law and justice as a Circuit Judge for the Fifth Judicial Circuit Seat 1.

I love South Carolina and her people. I have been devoted to their welfare in all my endeavors. I want to serve as a Circuit Court Judge because I believe my experience and life's work provides me a vital perspective to discharge the duties placed in me as a judge in a manor that will build public confidence and awareness of the importance of our system of justice and the rule of law. If given the privilege to serve, I will work hard each day to merit the trust placed in me.

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? Canon 3B(7), Rule 501 SCACR, provides that *ex parte* communications should be avoided generally. Our Supreme Court provided this important guidance:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition is not against "prejudicial" *ex parte* communications, but against *ex parte* communications. *Burgess v. Stern*, 311 S.C. 326, 330-331, 428 S.E.2d 880, 883 (1993), quoting *In re: Wisconsin Steel*, 48 B.R. 753 (D. Ill. 1985)

Consistent with Canon 3 and our Supreme Court's direction, as a Circuit Judge, I would not engage in *ex parte* communications except where narrowly permitted or required by rule or law.

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? Yes. The standard established by Canon 3E, Rule 501 SCACR focuses on whether the judge's impartiality "might reasonably be questioned..." Thus, the objective analysis is not limited to the presence of actual bias but also the appearance of bias as considered from the "perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (Rehnquist, CJ, respecting recusal). As such, yes, I would grant the motion. Recusal is mandatory when a judge's impartiality could reasonably and objectively be questioned.
7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative? I believe a Judge must not only avoid impropriety but also the appearance of impropriety in all aspects of their life. I believe this also extends to a Judge's spouse or close relative. First, as I have done in my prior 22 years of public service, I would take all actions necessary to prevent any appearance of impropriety in my life and my immediate family's lives. Second, if I became aware of an appearance of impropriety because of the financial or social involvement of my

spouse or close relative, I would take action to remove any appearance of impropriety. Third, I would seek guidance from the Judicial Advisory Committee Opinions and Orders. Lastly, I would lean on the experience of other colleagues on the bench who I admire for guidance on how to handle such situations.

I believe a lawyer goes through a significant change in their public and non-public life when he or she becomes a judge that may require a change to financial or social involvements in order to eliminate any appearances of impropriety.

8. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?
I would not accept gifts from attorneys. I would comply with all ethical rules. I would attend social functions that are open to all members of the judiciary. I would make it my practice to not socialize with an attorney when that attorney has a matter pending in my court.
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?
I would comply with the Code of Judicial Conduct. If I was ever confronted with knowledge of misconduct or a substantial likelihood of misconduct or infirmity of a fellow judge or lawyer, I would do as required by the rules and report it.
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. Yes, as a member of the General Assembly, I raised funds for my own campaigns and assisted in fundraising for others. Since leaving the General Assembly in 2018 my political fundraising activity has greatly reduced.

For most of my adult professional life I have engaged in fundraising for social, community and religious organizations. As a candidate for a judicial position and should I have the privilege to serve as a judge, I would only make donations to my church and other charitable organizations.

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?
It would depend on the nature of the decision, but I would always maintain ultimate responsibility for my orders. There are procedural matters that I might handle with a Form 4 Order. Given my experience as an attorney, I could envision asking a prevailing party to draft an order consistent with my ruling from the bench and sharing the draft order with opposing counsel for comment prior to submission to the court. With larger decisions taken under advisement, I would draft them myself with the possible assistance of a law clerk conducting legal research. I would reach out to other experienced judges to learn how they managed their orders production to ensure timely administration of Justice.
14. If elected, what methods would you use to ensure that you and your staff meet deadlines?
As a practicing attorney I kept redundant systems by computer and a written back-up to ensure deadlines were met. We also held weekly status meetings to review deadlines for the next week and the following two weeks to ensure the allocation of time and resources needed to timely complete the work. I would look to learn from experienced trial judges about practices that they found beneficial to ensure all deadlines are met.
15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?
I am opposed to "judicial activism." I am an institutionalist. I believe in the fundamentals of our democracy and the separation of powers as established by our Constitution. When I was a legislator, I could, with my colleagues, set state policy by statute. As a judge, it is my duty to follow and enforce the law.
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?
One of the reasons I am seeking to serve as a judge is to improve the legal system and build public confidence in the administration of justice. As a judge, I will be active far beyond what would be required of my service, by participating in Bar continuing education programs, speaking to civic organizations and serving as requested in support of Court initiatives. I expect to have the opportunity to serve in professional organizations and/or commissions working to improve

our legal system. I would like to contribute by serving as a judge in a Veteran's Court.

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?

Though I have never served as a judge, I am confident that the pressures of serving would not strain my personal relationships. My wife and I are best friends, and I would not and could not pursue this without her full support. We both know well the pressures of my work as a practicing attorney, a Soldier, a business owner, and an elected official and doing all of those at the same time. To address the pressure of serving as a judge, I would do as I have always done to protect my personal relationships through devotion, communication, and a commitment of personal time. Similarly with respect to my children, friends, and relatives, I have been able to manage my professional pursuits without straining my important personal relationships. Indeed, these relationships can give me the strength and support needed to handle the challenging work I have faced throughout my life.

I would also seek guidance from experienced trial judges about how they were able to manage the demands of serving as a judge and being there for their loved ones.

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:
- b. Juveniles (that have been waived to the Circuit Court):
- c. White collar criminals:
- d. Defendants with a socially and/or economically disadvantaged background:
- e. Elderly defendants or those with some infirmity:

I believe sentencing would be the most challenging task facing a judge. With respect to all the above categories and consistent with Canon 3, I would perform the duties of my office, including sentencing, impartially and diligently. Every case is different and each stand on its own facts as presented and the applicable law. With this

In mind, I follow a deliberate process approaching each case with my mind clear of any bias or prejudice. Then, I would receive the facts as presented in the record. Lastly, I would apply the law.

Drawing on my experience in sentencing in federal court, I would endeavor to ensure that a sentence I issue would 1) reflect the gravity of the crime, 2) that the punishment furthers the goal of deterrence, 3) that the public is protected from further crimes by the criminal and 4) that the criminal receives any necessary treatment or education to further the goal of rehabilitation and reduce recidivism.

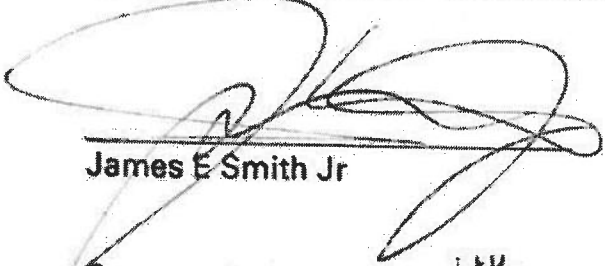
19. **Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.**
20. **Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved? No.**
21. **Have you met the mandatory 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? An appropriate demeanor for a judge is essential to the administration of justice. It is one of the qualities I considered most important when I was in the position of voting for judges as a legislator. It has been my personal practice as a lawyer, soldier, and lawmaker to conduct myself with an appropriate demeanor. Canon 3 provides solid guidance on the appropriate demeanor for a judge. A judge with an appropriate demeanor can build public confidence in the judicial system.**

Judges are representatives of our system of justice and their conduct should reflect highest ideals embodied in the judicial branch. A judge should always be respectful of others, humble in their service, patient while also being firm and have a sense of humor. A judge I admire shared with me a quote by Socrates which directly addresses this question, "A judge shall hear courteously; answer wisely; consider soberly; and decide impartially."

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? Anger is never appropriate in dealing with a member of the public, a criminal defendant, attorneys or pro se litigants. As a judge I believe I can maintain an expectation for decorum and control of the**

courtroom without anger.

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



James E. Smith Jr

Sworn to before me this 1th day of June, 2023.

Laura H. Diaz
(Signature)

Laura H. Diaz
(Print Name)

Notary Public for South Carolina
My Commission Expires: 3/21/2032

