



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

Circuit Court
(New Candidate)

Full Name: Thomas J. Rode

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

I want to be a Circuit Court judge because the law, the judicial process, and the people involved in it are all important to me. Preserving these institutions for the next generation of South Carolinians is imperative and I feel sincerely called to serve that goal. Over the last fifteen years as both an appellate law clerk and a litigator in private practice, I have handled civil, criminal, and appellate matters. Through this I have developed a broad understanding of the substance of the law as well as the practical realities of the practice of law. I want to be a Circuit Court judge because my passion for understanding the law together with my practical experiences provide me with an exceptional set of skills to deploy for the benefit of the judiciary, the people of my community, and the citizens 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?

I have no specific plans to return to private practice at this time.

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?

My philosophy on *ex parte* communications is to use caution. Generally, I believe *ex parte* communications—particularly on the merits of a case—create an unnecessary risk of undermining confidence in the impartiality of the Court. However, although disfavored, I could envision scenarios in which *ex parte* communications might be tolerated. As an example, Rule 65 of the South Carolina Rules of Civil Procedure contemplates an *ex parte* restraining order in cases of emergency. In addition to emergencies, *ex parte* communication may be tolerated when it is limited to administrative or scheduling issues and does not otherwise violate the law or applicable Canons of Judicial Conduct. Therefore, as a general philosophy, a Circuit Court judge should use caution and avoid *ex parte* communications if it is possible to do so without adversely affecting the parties, their counsel, or court administration.

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 make the circumstances known to the parties and attorneys and explain that I was confident that I could maintain impartiality. However, if a party persisted and moved for recusal, I would consider the specific facts of the matter and evaluate the motion under the applicable legal standard. If the evidence presented demonstrated a reasonable basis to question my ability to remain impartial, or revealed a threat to public confidence, I would grant the motion. If the evidence did not create a reasonable basis to question my impartiality, I would deny 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?

As a Circuit Court judge, I would have an ethical obligation to avoid the appearance of impropriety. Therefore, I would take the steps necessary to avoid the appearance of impropriety in the first place. If a scenario arose where these measures could not abate the appearance of impropriety, even when I knew there was no such impropriety, I would owe an ethical and professional obligation to the parties, the judiciary, and the citizens of South Carolina to take whatever action was necessary to avoid this appearance, including recusing myself where appropriate.

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

I would neither solicit nor accept gifts from anyone. However, I would not refuse ordinary gifts for life occasions such as birthdays or anniversaries that may be exchanged between myself and close family and friends who could not otherwise appear before me. Similarly, I would not refuse ordinary and periodic hospitality from friends or family provided that it is commensurate with the hospitality they provided me before I became a Circuit Court judge and provided it was of nominal financial value. I would refuse any gift

of significant financial value from any person who would or could appear before me. In addition, I would refuse any gift if there were any possibility the gift could be interpreted as being made for the purposes of gaining influence, even if I did not personally believe the gift was given for this purpose. This would include, but not necessarily be limited to, refusing gifts for occasions for which gifts are not customarily exchanged, or where the gift is presented by a person who did not give similar gifts prior to my being a Circuit Court judge.

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?

If I became aware of misconduct on the part of a lawyer or judge, depending on the circumstances, I anticipate I would first discuss the matter with the lawyer or judge in question and encourage them to self-report. If the lawyer or judge declined to self-report, and I felt the conduct raised a question as to the honesty, trustworthiness, or fitness of the lawyer or judge, I would have an ethical obligation to report the conduct under Rule 8.3 of the South Carolina Rules of Professional Conduct. In this process, if I felt it necessary, I would seek out independent and confidential advice and guidance on how to properly handle the situation. The same would hold true if I became aware of a lawyer or judge's infirmity. The South Carolina Bar has established resources to help in these situations, and I would encourage those resources to be used.

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.

In 2008, I assisted in a fundraising event held by the United Way in Georgetown County. This consisted of soliciting items for silent auctions and helping to sell tickets to the event.

Between 2015 and 2018, I served on the Ambassador Board of the South Carolina Bar Foundation and co-chaired a committee of the South Carolina Bar Association's Young Lawyers Division. In both roles, I engaged in periodic fundraising events to raise money for the South Carolina Bar Foundation. This included an annual fundraising event hosted in conjunction with the South Carolina Bar Convention. I assisted with the planning of this event and soliciting donations of items for charity auctions and other fundraising activities. In 2017, I received the Young Lawyer Division's "Star of the Quarter" award for my efforts.

In 2018, I participated in the “Trailblaze Challenge” to benefit the Make-A-Wish Foundation. Through this, I solicited and raised over \$2,500.00 for the Foundation and completed a 28.3-mile hike along the Foothills Trail in solidarity with children suffering with critical or life-threatening conditions and their families. This was a tremendously meaningful experience for me.

My wife is the vice-chair of the Board of Directors for Charleston Legal Access, a non-profit law firm that provides discounted or pro bono legal services to members of the community who are otherwise unable to afford the assistance of an attorney. Through my wife’s work with this organization, we have participated in many fundraising efforts over the past several 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?

It would be my goal to draft orders in a manner that balances the need for concise, clear, and accurate orders with the need for those orders to be drafted expeditiously. In my opinion, the right of litigants to obtain an impartial resolution of issues before the Circuit Court cannot be separated from the right to obtain that resolution as promptly as practical. Understanding that current caseloads could make this difficult, I would utilize Form 4 orders where appropriate to provide for expeditious decisions. Where it is practical, I would also request the assistance of the attorneys involved to assist in reducing the time necessary for drafting more complex orders subject to my careful review and modification as needed.

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

I believe the same techniques that are utilized in private practice would have application to my work and management of my staff as a Circuit Court judge. This would include ensuring there was regular communication with staff to keep track of all pending matters and taking proactive measures to ensure all items are moving toward completion to avoid any domino effect on the other matters pending before the Circuit Court.

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

Activism is not, and cannot be, the role of the judiciary. Activism, by definition, contemplates action to effect change or advance a particular goal or agenda. A Circuit Court judge cannot have an agenda. Not only would this negate a judge’s impartiality, but it would also intrude upon the role of the Legislature. By the same token, a judge cannot

neglect that the judge's role is to operate as a check on the conduct of the other branches of government in the rare circumstance that conduct exceeds the bounds of the law or Constitution. However, such analysis turns on the law and not on the judge's feelings about the subject. It is not the role of the Circuit Court to set public policy. It is for the Legislature to establish public policy and pass laws that serve as a declaration of that public policy. A Circuit Court judge serves that public policy by applying the law as it is written.

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?

If elected I would undertake efforts to teach both law students and CLE seminars. I previously taught law school classes for several years and it is something that I enjoy. I believe it is important to the development of the law that law students have the chance to learn practical legal skills from practitioners. Serving as a judge would provide a unique ability to gain a wealth of practical knowledge. Sharing this experience and advice with the next generation of lawyers is part and parcel of a judge's role as a public servant.

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?

My experience informs me that it would be naïve to believe that there would not be times that the pressures of serving as a Circuit Court judge would strain my personal relationships. The adversarial nature of the justice system and the unfortunate circumstances that bring most people into the justice system cannot be avoided. My efforts to mitigate the strain on personal relationships would not focus on trying to change the system but instead focus on cultivating relationships that foster an understanding that some stressors cannot be avoided. To this, it is important that my spouse is also a lawyer and over the years our mutual respect and appreciation for the realities of the profession have allowed us to work together to minimize the strain on our relationship with each other and our relationship with our children.

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.

As a threshold matter, my philosophy on sentencing would necessarily require consideration of the unique facts and circumstances of each case. It would be my responsibility as a judge to understand those facts and circumstances and consider them within the larger context of the competing interests the Legislature has determined are applicable. These include the State's interest in promoting personal responsibility and holding people to account for their criminal behavior as well as in rehabilitating those who engage in criminal behavior. Victims of crimes have an interest in obtaining restitution and

satisfaction for the harm done to them and members of the community have a public safety interest in minimizing their exposure to people who engage in criminal activity. Traditionally these interests have been encapsulated under the general idea that punishment should serve as retribution for harm, a crime deterrent, and to rehabilitate or otherwise mitigate recidivism. Each of these interests must be considered in a way that promotes a criminal justice system that operates fairly and consistently from case to case. Because these factors weigh differently in every case, my philosophy on sentencing cannot be characterized in categorical terms. Whether an offender may fall in one of the following categories would not alone be dispositive of the proper sentence. With that, my general theory on each of the categories is stated below.

a. Repeat offenders:

In the case of repeat offenders, I would have to consider the fact that prior efforts to incapacitate, deter, or rehabilitate the defendant have proven unsuccessful. The insufficiency and ineffectiveness of any past sentence, combined with other applicable information, must necessarily be given consideration in evaluating the proper sentence.

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

This is a broad-spectrum category that would likely implicate several other unique considerations. This would likely begin with inquiring whether there are reasons the Circuit Court should distinguish between this juvenile defendant and a similarly situated adult defendant. Such considerations might also include the nature of the crime, the factors that created the opportunity for a juvenile to engage in criminal activity in the first place, the juvenile's mental and physical developmental, what, if any, intervention efforts had been taken in the past, and the nature of the sentence being considered. This category, like the others, would require evaluation on a case-by-case basis.

c. White collar criminals:

While the nature of these crimes may seem different from crimes of violence, these are not victimless crimes. I would resist the suggestion that the considerations relevant to sentencing this category of criminal are different than any other category of criminal. How and whether the applicable sentence should vary from one type of crime to another is largely a decision for the Legislature. Where the Legislature has set out the applicable sentence range for a particular type of crime, consideration of the type of crime is not really a factor for the Circuit Court to consider. Therefore, the process of evaluating the proper sentence for individuals convicted of white collar offenses would be the same as any other defendant. I would evaluate all the facts and circumstances, the impact and harm caused, the criminal history of the defendant, and the various interests of the State, and the victims, to decide the appropriate sentence within that range set by the Legislature.

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

Undoubtably there may be cases in which the unique circumstances require consideration of the societal or economic disadvantages of an individual defendant. However, as a general rule, the law must apply equally to everyone. This rule includes those of different social and economic backgrounds—in the same way it includes people of different sexes, races, and religions. While I am certainly aware of the observation that this category of defendants may have received disparate treatment in the past, it is not (and cannot be) the role of a Circuit Court judge to attempt to promote societal change through sentencing. The means of affecting societal change is the province of the Legislature. The Circuit Court's role is limited to applying these laws in a fair and just manner. Unless and until the Legislature directs differently, as a Circuit Court judge, I would remain obligated and resolved to apply the law and evaluate sentences fairly and evenly among people of all social and economic backgrounds.

e. Elderly defendants or those with some infirmity:

This presents a similar scenario to juveniles. It is difficult to articulate a categorical philosophy based on this factor alone. There could be scenarios in which this factor would weigh heavily and other scenarios where it may weigh little—or not at all. Certainly, it would be relevant for the Circuit Court to understand the extent to which a defendant's infirmity contributed to their criminal conduct or possibly mitigated their criminal intent. A defendant's age as well as physical or mental condition may also be relevant when evaluating the appropriate means to incapacitate and rehabilitate the defendant. Overall, my sentencing philosophy would begin with a blank slate, and then consider the unique facts and circumstances that are relevant to evaluating the proper sentence in the specific case. If a defendant's age or infirmity were relevant, I would give it the appropriate consideration.

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?

In this situation, I would not proceed with hearing a case without disclosing this *de minimis* interest to the parties and advising the parties this interest would not effect my ability to remain impartial. In doing this, I would be mindful of the fact that in the same way a judge is required to avoid even the appearance of impropriety, it would be ideal for a judge to have no interest in the cases before the Court. However, it may not always be practical or possible for the case to be reassigned to a different, uninterested judge. Therefore, where I was confident my *de minimis* interest would not affect my impartiality,

and the parties did not object, I would hear the case. On the other hand, if a motion was made for my recusal, I would consider the motion under the applicable legal standard and rule accordingly.

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

Yes. See attached reports.

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 that serves to promote and preserve the integrity and impartiality of the judiciary. This would apply in all circumstances in which a judge is interacting with members of the public, the judiciary, or any other scenario in which the judge's conduct would or could reflect upon the integrity of the judicial system. A Circuit Court judge is the face of the law and should therefore conduct himself with the upmost civility when dealing with lawyers, litigants, or any member of the public.

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?

Judges are only human and circumstances may arise which create feelings of anger or frustration. However, regardless of whether those feelings may be reasonable under the circumstance, it is not appropriate for a Circuit Court judge to deal with people or make decisions out of anger. Therefore, as a Circuit Court judge it would be incumbent on me to identify potentially problematic scenarios and keep the matter from escalating to the point of anger—either to myself or those involved in the matter before the Court. A judge, as a representative of the Court, should treat everyone with courtesy and patience. While a Circuit Court judge must naturally remain firm on matters of consequence, this firmness cannot be conveyed in a way that could be perceived as anger. This would be particularly true when dealing with criminal defendants or pro-se litigants to whom the presiding judge is the physical embodiment of the law. Where a judge acts out of anger, or even appears to act out of anger, it creates doubt as to the judge's impartiality and by extension undermines the integrity of the Court. Because the law treats all parties impartially and dispassionately, a judge must do the same.

[signature page to follow]

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 _____, 2023.

(Signature)

(Print Name)
Notary Public for South Carolina
My Commission Expires: _____