



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

**Circuit Court**  
**(New Candidate)**

Full Name: Erin Elizabeth Bailey

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

As a child, I helped my mother clean the small church we attended in lieu of a tithe. Since then, whenever able, I have sought to serve others to the best of my ability. I have volunteered at soup kitchens, Habitat for Humanity builds, served dinner at senior centers, gathered food for food drives, delivered supplies to flooded areas after hurricanes, and helped out in whatever way I could. When I finished my clerkship with Judge Hyman, I declined an offer to work at a private firm, choosing instead to spend the next 6 1/2 years in service to the State of South Carolina as an assistant solicitor. While I have enjoyed private practice, and have been able to serve by practicing indigent defense, I yearn to serve the State of South Carolina to my highest and best ability. I can think of no better use of my even temperament, sharp mind, and work ethic than to serve as a Circuit Judge.

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?

Rule 501, SCAR, Cannon 3(B)(7) requires that "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the

judge outside the presence of the parties concerning a pending or impending proceeding.” There are a few exceptions for scheduling, administrative purposes, and emergencies that do not deal with substantive matters. Ex parte communications, under these exceptions require that the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and that the Judge promptly notifies all other parties of the substance of the ex parte communication, and allows an opportunity to respond. Further, a Judge may obtain the advice of a disinterested expert on the law applicable to the proceeding provided the Judge gives notice to the parties of the person consulted, the substance of the advice, and gives the parties a reasonable opportunity to respond. A Judge may consult with court personnel whose function is to aid the Judge in carrying out the Judge’s adjudicative responsibilities or with other Judges. In an effort to mediate or settle matters pending before the Judge, a Judge may, with the consent of the parties, confer separately with the parties and their lawyers. In a few circumstances, ex parte communications are expressly allowed by law. My philosophy regarding ex parte communications is that the rules, as specifically enumerated, should be followed.

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. If I disclosed something that had the appearance of bias, but I believed it would not actually prejudice my impartiality, and a party requested recusal, I would likely grant the motion. If the conflict was significant enough to warrant disclosure, then it would be significant enough to require recusal upon motion of one of the parties. Rule 501, SCACR, Cannon 3 (E)(1) states that “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably 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?

If the financial or social involvement of my spouse or close relative created the appearance of impropriety, the first thing I would do is disclose it to the parties. If one of the parties made a motion for recusal, I would likely grant it to maintain the appearance of propriety. While Rule 501, SCACR, Cannon 3(E)(1)(c) and (d) only require recusal where the judge, judge’s spouse, parent or child, or other member of the judge’s family residing in the judge’s household have an economic interest that could be substantially affected by the proceeding, or where the judge, judge’s spouse, or a person with a third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding, or an officer, director, or trustee of a party, is acting as a lawyer in the proceeding, is known by the judge to have more than a de minimis interest that could be substantially affected by the proceeding, or is to the judge’s knowledge likely to be a

material witness in the proceeding, Rule 501, SCACR, Cannon 3(E)(1) requires that a judge disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The rules require recusal at the appearance of impropriety, not just actual impropriety under the rules.

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

As provided for in Rule 501, SCACR, Cannon 4(D)(5), I would not accept gifts, bequests, favors, or loans from anyone except: 1) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to me and my spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice; 2) my husband may accept a gift that both of us may enjoy so long as it could not reasonably be perceived as intended to influence me as a judge; 3) ordinary social hospitality; 4) a gift from a relative or friend for a special occasion so long as the gift is commensurate with the occasion and the relationship; 5) a gift from a friend or relative from whom I would be disqualified regardless of the gift; 6) a loan from a bank or lending institution that issues loans in the ordinary course of business on the same terms generally available to people who are not judges; 7) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; 8) a gift from a party or other person who has not come or is not likely to come or whose interests have not come or are not likely to come before me and is less than \$150; 9) a judicial portrait or memorial which complies with the Rules of Professional Conduct. As to avoid the appearance of impropriety, I would likely decline social hospitality invitations from other lawyers, unless other Judges were offered the same hospitality.

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 had information indicating a substantial likelihood that another judge has committed a violation of the Appellate Court Rules, I would likely talk to the Judge and the party involved. Depending on the response, I may report the violation to the appropriate authority for investigation as required by Rule 501, SCACR, Cannon 3(d)(1). If I had knowledge that another judge had committed a violation of the Appellate Court Rules that raised a substantial question as to the other judge's fitness for office, I would immediately inform the appropriate authority. If I had information indicating a substantial likelihood that a lawyer had committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, I would directly communicate with the lawyer, and depending on the response, I may refer the matter for further investigation to the appropriate authority. If I had knowledge that a lawyer had committed a violation of the Rules of Professional Conduct that raised a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, I would notify the

appropriate authority as required in Rule 501, SCACR, Cannon (D)(2).

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.

As a layperson, yes, I have engaged in political, social, community, and religious organization fundraising. I have been asked to host fundraisers for political candidates, both Republicans and Democrats. I have raised funds for my church and my children's Catholic school. I have raised money for various philanthropic organizations, including but not limited to the Lowcountry Autism Foundation, Camp Rise Above, Cure SMA, the Magdalene House of Charleston, and the MUSC Children's Hospital. I realize, that as a judge, I will no longer be permitted to engage in this type of fundraising, if elected. I would strictly adhere to Rule 501, SCACR, Cannon 4(C) and Cannon 5. Since becoming a candidate for Judicial office, I have ceased all political and fundraising activity.

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?

If elected, I may ask for proposed orders, only to frame the issues in the case. I would have my law clerk draft the orders, with my input, and would personally edit and review any order issued.

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

If elected, I would use a dual calendar system, as I do in my private practice, to ensure that myself and my staff meet all deadlines. I would also set stringent internal deadlines that are more restrictive than the actual deadlines to ensure that the actual deadlines are met.

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

Judges have no role in setting or promoting public policy. The role of the judiciary is solely to interpret and enforce the law as it has been written by the General Assembly of this state, subject to stare decisis of the higher courts, the South Carolina Constitution, and the Constitution of the United States of America.

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 look forward to having the opportunity to engage in activities that will improve the law, the legal system, and the administration of justice, as opportunities arise. I have a particular interest in the movement towards Drug Courts, Mental Health Courts, Homeless Courts, and Veterans Courts, and would welcome the opportunity to participate in the creation or administration of these, or other similar diversionary programs.

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?

The pressure of serving as a Judge would not likely strain my existing relationships. My family has supported my career through travel, long hours, and stressful jobs before, and they will do it again. The decision to run for Judge was not one that I made lightly, or without consulting my family.

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:

My philosophy on the sentencing of repeat offenders depends greatly on what offense has been repeated. Our General Assembly has crafted greater penalties for repeat property offenders, and imposed mandatory life without the possibility of parole sentences for repeat violent offenders. In addition, our General Assembly has created a sentencing system for drug offenders that increases the minimum and maximum sentences as the number of offenses increases. As a judge, I would comply with the law as it is written regarding sentencing. When given a wide-range of potential sentences to consider, I would carefully consider the victim impact, the types of crimes the offender has been convicted of in the past, and the other types of sentences the offender has completed, or not completed. For example, if an offender has already violated a probationary sentence in the past, they are not a good candidate for a probationary sentence.

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

Juveniles who have been waived to the Circuit Court have committed our state's most serious offenses. My philosophy on sentencing such an offender is that if they are before me in the Circuit Court, after the Solicitor has declined to remand the case back to Juvenile Court, and after a Family Court Judge has held that the case is properly waived to Circuit Court, then they should be sentenced as any other offender for the very serious crime they have committed.

**c. White collar criminals:**

White collar criminals should be treated no differently than any other offender. I would carefully consider the offender's criminal history and the victim's impact statement before sentencing. If a victim is primarily concerned with collecting restitution, and it is reasonable to believe that an offender has the ability to pay that restitution, then I would structure a sentence that gives the offender the ability to pay the restitution back. If the victim has lost hope of collecting any restitution, or it appears that the offender is unable to pay it back, then a punitive, instead of restorative sentence would be appropriate.

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

While many offenders who appear before a judge have backgrounds that garner sympathy, the role of a Circuit Judge is not to empathize with a criminal defendant who appears before her for sentencing. The role of a Circuit Judge is to sentence that offender for the crime or crimes they have committed.

**e. Elderly defendants or those with some infirmity:**

The sentencing of an elderly or infirmed offender must be done with careful consideration given to the offense, the impact on the victim, and the cost to the State of incarceration. While some elderly or infirmed offenders should not be incarcerated due to their infirmity, some continue to offend, in spite of their infirmity. I specifically recall observing a PCR hearing when I was Judge Hyman's clerk where an elderly and infirmed offender continued to victimize young women and produce child pornography while infirmed. In that instance, he was taking advantage of sympathy he garnered due to his advanced age and infirmity. In situations like that, no mercy should be granted to the offender.

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, while the rule allows for it, it may create the appearance of impropriety.

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?

Rule 501, SCACR, Cannon 1(A) states that: “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.”

A judge should have a demeanor that projects fairness, and evenhandedness at all times. A judge should conduct him or herself both in and out of the courtroom with professionalism, courtesy towards citizens, and professional respect towards lawyers.

In many cases, the role of a Judge in the courtrooms of this state is that of a referee. The Judge makes the calls in procedural and evidentiary disputes, serves as neutral facilitator of the proceedings, and starts and stops the clock. But it's the lawyers' courtroom, and the litigants' case. The lawyers and litigants are the players on the field. They are the ones that win or lose. They should be able to present their case as they see fit so long as their presentation comports with the rules.

As Chief Justice John Roberts so eloquently said, in his opening statement during his nomination hearings before the United States Senate Judiciary Committee:

Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ball game to see the umpire. Judges have to have the humility to recognize that they operate within a system of precedent, shaped by other judges equally striving to live up to the judicial oath. And judges have to have the modesty to be open in the decisional process to the considered views of their colleagues on the bench.

Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States, 109<sup>th</sup> Cong. 55-56 (2005) (statement of nominee, John G. Roberts, Jr.).

I do not intend to be a Judge who lectures or gives long speeches. I believe that a

Judge cedes the floor to the lawyers when they seek election to the other side of the bench.

Finally, if elected, I intend to be a Judge who serves as a neutral arbiter of the cases before me. I would conduct myself, both inside and outside of the courtroom, in a way that gives no appearance of impropriety, both professionally and personally.

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?

No, I do not feel it is appropriate for a judge to be angry with a member of the public, a criminal defendant, an attorney, or a pro se litigant. Court is personal for the litigants involved, criminal defendants, victims, and anyone with a personal stake in the litigation. Court is not personal for the judge. The judge has shown up to her job. No matter the outcome of the litigation, the judge will sleep in her own bed that night and have the freedom to come and go as she pleases. No matter the outcome of the litigation, the judge will not owe anyone money when the litigation is concluded. While litigants, and sometimes lawyers, may become impassioned, and they may even take out their frustration and anger on the judge, it is inappropriate for the judge to internalize that anger or frustration or take it personally.

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

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Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_