



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

**Supreme Court/Court of Appeals
(Incumbent)**

Full Name: Stephanie Pendarvis McDonald

Business Address: South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Business Telephone: (803) 734-1890 (Columbia)
(843) 958-5102 (Charleston)

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

Yes.

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

Not at this time, 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 Circuit Court judges, *ex parte* communications regarding scheduling or administrative matters are at times necessary, particularly for a Chief Administrative Judge. My office handled such scheduling by e-mail, with copies sent to all attorneys/unrepresented parties involved in a matter. My policy is to avoid *ex parte* communications, however, in accordance with Canon 3(B)(7)(d), I did work with attorneys to assist them with mediation and working toward settlement of matters pending before me when everyone consented.

Ex parte communications are not necessary for scheduling purposes at the Court of Appeals as our Clerk's Office handles all scheduling of arguments.

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?

Pursuant to Canon 2 and Canon 3(E), I recuse myself from all matters involving my former law partner and her firm. Recusal is not practical in the case of lawyer-legislators, unless there is some other bias involved, as these attorneys would never be able to find any State court judge to hear their cases. My sister and several first cousins are also attorneys; they do not appear before me.

My response to such a motion would also depend upon the circumstances of the case. Generally, I would recuse myself unless it appeared that the attorney or party was “judge-shopping,” merely seeking to delay the case, or acting unreasonably. I would also look to Canon 3(E), which addresses proceedings in which a judge’s impartiality might *reasonably* be questioned. If the alleged bias – or appearance of bias – is not reasonable, recusal simply pushes a problem litigant (or attorney) off for another judge to have to deal with. Canon 3(B) requires that a judge hear and decide matters assigned to him except in those cases when disqualification is required. This has not been an issue at the Court of Appeals, but we did have some interesting parties and occasional motions in the Circuit Court.

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 and colleagues do not give me gifts, but I do accept invitations (when my schedule permits) to attend and speak at conferences hosted by organizations such as the South Carolina Bar Association, South Carolina Association for Justice, South Carolina Trial Attorneys Association, and Injured Workers’ Advocates. I report any accommodations or conference fees provided by such groups on my annual Rule 501, SCACR, disclosure report. I review Canon 4D(5) if I am invited to attend an event when I, or others, might question whether my attendance is appropriate or not. That being said, I think it is important that judges not isolate themselves from the legal community (and the community at large).

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 either “take appropriate action” or report the violation - - or both - - depending on the specifics of the situation.

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

Not since my 2011 election to the Circuit Court.

9. How do you prepare for cases that come 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 I 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 and spade their draft bench memos and then send them to me for review, editing, 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 need to be updated on before oral argument.

On the Circuit Court, we would pull the file to learn about the case and any prior motions or orders that may impact the particular issue before me. I reviewed any 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 already familiar with the file and applicable law.

10. 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 “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 of the declaration of the public policy of the State of 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).

11. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do 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. I participate in the Judicial Observation (JOE) Program every year and attend “Courthouse Keys” luncheons and other events hosted by young attorneys. I have spoken for the Charleston School of Law’s “Professionalism” series, and I try to be approachable and to mentor young lawyers, when appropriate. I no longer serve on the boards and commissions I enjoyed while in private practice because the Canons forbid me from participating in fundraising efforts or giving legal advice. Thus, it is hard for me to be of good use to these organizations, and I believe they are better served by board members who are not so limited in participating in these activities.

12. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

No. My only child is twenty-one and away at college. Most of my very large family lives in the Lowcountry and other than the need to remind one or two of them that I am not permitted to discuss politics, they are very supportive. My friendships are only affected to the extent that I need to be careful about making sure I understand the nature of some of the events they invite me to attend (i.e., nothing partisan, nothing with a fundraising aspect, etc.).

13. Are you currently serving on any boards or committees? If so, in what capacity are you serving?

No. I did serve from 2016-2018 on the ad hoc committee chaired by Judge John Geathers to streamline and update the Internal Operating Procedures of the Court of Appeals.

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 that the Governor presented “overwhelming” historical evidence in his brief). I would analyze such information in the context of the particular case or controversy before our Court.

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

To permit an agency to interpret the Constitution would allow an improper executive encroachment into judicial responsibilities. This would implicate (and violate) the “separation of powers” doctrine. See S.C. Const. Art. Section 8. Nor may an agency overstep the powers that the General Assembly has lawfully delegated to it.

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

In interpreting the Constitution (or any statute), the cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. This begins with an examination of the constitutional or statutory text. Committee minutes are not controlling as to the intent behind, or the interpretation of, the State Constitution, but they may help with providing historical context.

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

No.

16. 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 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 women of all races, creeds, and national origin.

I am also a member of the South Carolina Women Lawyers Association.

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

Yes.

18. 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. This can be difficult at times because a judge must also maintain order in the courtroom. Still, this is never an excuse for rudeness or "robitis." These rules apply twenty-four/seven, and they are important to a judge's credibility and to the public's—and legal community's—confidence in our Judiciary.

19. Is there a role for sternness or anger with attorneys?

There is no role for anger, but sternness is, at times, necessary. This is less of an issue at the Court of Appeals as it is a more formal environment than the trial courts are. Judges must recognize that even seasoned trial attorneys may react oddly to the stress of a trial or 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.

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 _____, 2019.

(Signature)

(Print name)

Notary Public for S.C.

My Commission Expires: _____

