

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

Circuit Court Judge

Full Name: John Michael Baxley
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1. Why do you want to serve another term as a Circuit Court Judge?

Because I believe that my experience on the bench, and previous service as a member of the General Assembly, provide a good perspective from which to carry out the duties of a circuit judge. I hope that my previous service as a Circuit Judge has had a positive impact, and continue to be humbled by the confidence shown by the General Assembly in previously allowing me to serve.

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

I am currently eligible for retirement. I cannot at this time pledge to serve the full six-year term if re-elected, but have no immediate plans to retire.

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

Not at this time.

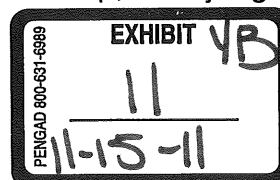
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Generally, *ex parte* communications should be avoided, as they undermine the confidence of all parties in the administration of justice. There are certain procedures in which *ex parte* communications are necessary (approval of death penalty fees and expenses, defendants' requests for investigatory mental evaluation, for example). Otherwise, any effort by any party to attempt *ex parte* communications should be avoided by a judge and judicial staff. In the event an *ex parte* communication should occur, all parties should be immediately notified that such has occurred, the substance of the communication, and given an opportunity to respond.

6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

None of the above stated situations automatically require recusal unless the judge has some financial or economic entanglement with counsel as a result of the previous partnership, the judge was



previously involved as an attorney in the representation of the particular case at bar, or the judge has some other conflict requiring recusal. A judge should always be aware not only of actual impropriety but also the appearance of impropriety; however, a judge must also be cognizant of considerations of judicial economy, docket administration, distribution of workload among judges, and the timely operation of the courts.

7. 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?

The Court is acutely aware that the appearance of impropriety is generally equal in importance to actual impropriety, for the confidence of the public in the judiciary is a paramount concern. However, the Court should also be aware that some parties will use an alleged appearance of impropriety to “judge-shop”, delay justice, or for some other tactical purpose not related to the merits of the case at bar. I would only grant the motion if there was an actual impropriety or the appearance of impropriety was so great as to taint the perceived outcome of the proceedings.

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

These situations should be avoided because the appearance of impropriety will undermine confidence in the fairness of the judiciary and the outcome of the particular case.

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

Gifts to a judge are controlled by Canon 4(d)(5) of the Code of Judicial Conduct, which generally prohibits a judge from accepting such. I do not accept gifts from attorneys or parties who are or may be before the Court. I do not accept honoraria for speaking or presenting to any groups, but have on occasion accepted expenses reimbursement. As to social hospitality, I apply a standard similar to that imposed by both House and Senate Rules—if all judges similarly situated are included in the hospitality, and it does not appear to be an effort to exert influence on some issue before the Courts, I accept it, and report it as required. However, if the social hospitality appears to be offered to me alone, or is offered by lawyers with a matter presently pending before me, it is respectfully declined.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

Canons of Judicial Ethics 3(D)(1) and (2) require reporting when the misconduct rises to the level of raising a substantial question as to the judge’s fitness for office. The threshold for reporting lawyer

conduct is when such conduct raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness. I have and would handle any such situation by following the code of judicial conduct.

11. Are you affiliated with any political parties, boards or commissions that, if you were elected, would need to be re-evaluated? No.
12. Do you have any business activities that you would envision remaining involved with if reelected to the bench?

Yes. I am a fifty percent partner in a residential real estate company that owns rental property in the Hartsville community. The other partner in this venture is not an attorney. Further, I am a minority, non-participating shareholder in the Kitco company which manufactures incorporation kits for use by attorneys in the states of North and South Carolina. Finally, I am a minority, non-participating stakeholder in the ownership of one parcel of commercial property in Florence, South Carolina. None of these business ventures have presented a conflict thus far. I have chosen a non-managerial, non-participating, non-informed role in the last two investments because there are four (4) attorneys among the other shareholders in the two ventures, and I wish to avoid any potential conflict arising from presiding over cases in which counsel that have some connection to these entities are participating.

13. How do you handle the drafting of orders?

Generally, prevailing counsel is asked to prepare a written order and forward it to the court electronically within ten days of the date that all parties are informed of the decision. The proposed written order is then reviewed by my law clerk to insure that the document correctly states the terms of the order. Finally, I review the document, make any necessary final changes, and print and sign the final version. In some cases, because of the need for specificity, speed, when all sides are pro se, or because I am not comfortable in asking counsel to prepare an order, my law clerk and/or I draft and prepare the order.

14. What methods do you use to ensure that you and your staff meet deadlines?

Timeliness is an important component of a judge's work. Our office uses a computer system that tracks all matters under advisement, all orders for which we await receipt of a draft from counsel, and any other matter presently pending before our court, including requests that arrive by mail and other means of correspondence. This system tracks and monitors any and all deadlines imposed upon counsel, the date of receipt of materials in our office, as well as any deadlines imposed upon us by the particular circumstances of a case or request of counsel. The judicial assistant in my office has responsibility to input and monitor this system and to

follow up when counsel is not in deadline compliance and to insure that our office remains within deadline compliance.

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

My philosophy on “judicial activism” is that the establishment of public policy is the province of the General Assembly. The role of a judge is to apply and enforce the laws enacted by the legislature. Where there exists some dispute as to the application of a statute or need for interpretation, then the judge should rule in a way that is consistent with discernable legislative intent and constitutional parameters.

16. 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?

During my first two judicial terms, it has been my privilege to serve on the following committees or positions, each of which is intended to improve the legal system. If re-elected, I intend to continue participation in these and similar opportunities to upgrade the administration of justice in our state.

- 1) Member, Chief Justice’s Commission on Professionalism—An effort to improve professionalism among members of the Bar and judiciary. One of the results of this Commission was the new attorneys’ oath for South Carolina pledging greater civility, as well as heightened respect for parties, the Court, and opposing counsel.
- 2) Member, Joint Legislative Study Committee on Corrections and Penology—Chaired by Senator Fair, this Committee was charged with a review of the Corrections system to improve efficiency, reduce costs, and study potential statutory changes to enhance daily operations of the Corrections agency.
- 3) Vice-chair, Circuit Judges Advisory Committee—Appointed by the Chief Justice to study and review suggestions and proposals concerning the operations of South Carolina’s circuit courts.
- 4) Assigned Judge, statewide jurisdiction to oversee the operations of the Department of Mental Health forensic evaluation service—Appointed by the Chief Justice to develop and implement a plan to reduce backlogs of defendants awaiting forensic mental evaluation to determine whether such defendants are mentally competent to stand trial. Budget and staff reductions at the Department had resulted in lengthy delays in obtaining an evaluation, when the statute allows only thirty days to conduct an evaluation. The waiting time is now reduced to less than 30 days on average, and the Department is in statutory compliance.

- 5) Teacher, SC Annual School For New Circuit Judges—Each July, it is my privilege to serve as assistant director of the new judges' school conducted by our Court Administration, and I teach in the areas of administering Common Pleas Non-Jury Dockets and Mental Health issues in General Sessions Courts.
17. 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?

Being a judge can be lonely and can strain family relationships. I address this by being certain to plan and participate in family visits and outings, social interactions with neighbors and friends, and engaging in activities that I enjoy such as reading, kayaking, exercising, arrowhead hunting, gardening, etc.

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 sentencing philosophy for repeat offenders depends upon the type of crime for which they are charged. Repeat offenders for crimes of interpersonal violence or home invasion should be incarcerated as they pose a threat of harm to the general public. Repeat charges of shoplifting, petty forgery, and drug possession (as opposed to distribution) are often evidence of a drug or alcohol problem that may be treated through probation and substance abuse counseling, avoiding the costs of incarceration for the state as well as exposure to a hardened criminal element while in Corrections.

b. Juveniles (that have been waived to the circuit court):

The General Assembly has established a public policy for juveniles that attempts to avoid incarceration in the adult prison population for non-violent offenders and instead favors diversion programs, shock incarceration, or youthful offender detention. I attempt to give juvenile offenders an opportunity to show that they are learning a lesson from their brush with the legal system and intend to be a positive citizen. Sadly, however, some juvenile offenders are committing most serious crimes such as murder or display such a violent temperament that they must be incarcerated in adult Corrections.

c. White collar criminals:

I am not of the opinion that white collar criminals should be treated any differently than others who commit crimes. The fact that a person uses a sophisticated scheme of theft, has a college education, or violates the trust reposed in him or her by an employer does not make the crime more acceptable. The

victim is just as victimized if a theft occurs by computer as if it occurred at the point of a weapon. It has always seemed unfair to me that a person snatching a purse and taking \$100 would be treated more harshly than one who stole thousands through some clever plan.

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

All defendants should be treated equally by the Court regardless of economic circumstances. Most defendants are economically disadvantaged by the time they appear in court, having been incarcerated with resulting loss of employment. In many counties the majority of defendants are represented by the public defender. This should in no way influence the treatment they receive from the Court and I make every effort to avoid any appearance of different treatment for individuals based upon race, creed, religious beliefs, economic circumstances, or whether they have privately retained counsel.

- e. Elderly defendants or those with some infirmity:

Because of budget pressures and inability to provide medical care, county detention center personnel often encourage judges to consider alternative sentences for elderly and profoundly infirm defendants. Due to severe illness or need for acute medical care, I have sentenced some defendants to home incarceration when all parties agree. I am also aware, however, that some would claim infirmity in the hope of receiving more favorable treatment, and am careful to insure that all parties agree and the infirmity is documented before considering an alternative sentence.

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?

Judicial Canon 3(E)(c) specifically allows for a judge to hear a matter in which the judge or a family member holds a *de minimis* interest that could be substantially affected by a proceeding. If the rule were otherwise, the courts might be overwhelmed with motions for disqualification over minutiae that has no import on the case at bar. When confronted with this circumstance, I first advise all parties of the interest in the matter and give each party an opportunity to request recusal. If such a request is made, I would then decide whether the potential appearance of impropriety outweighs considerations of judicial economy and docket administration, and make a decision of this nature on a case by case basis.

21. Do you belong to any organizations that discriminate based on race, religion, or gender? No.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes.
23. What do you feel is the appropriate demeanor for a judge?

A judge should be respectful, courteous, temperate, not given to agitation or outburst, and treat all people with dignity regardless of their circumstances.
24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

This should apply every day at all times, regardless of whether one is on the job or not.
25. 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 a pro se litigant?

I do not believe anger is an appropriate emotion for a judge. To me, anger connotes fury, rage, or an extremely emotional reaction. A judge should always be even-tempered and fair. This is not to say that a judge can't be firm or even sometimes harsh in dispensing justice and administering the Court, for at times this is necessary. But when an angry judge metes out punishment, those observing will perceive that justice before that judge will depend upon his or her mood, and this undermines public confidence in our judiciary.
26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

At this point I have spent \$25.00 for clerical assistance, plus the cost of mailing this application packet to the Commission. I anticipate spending no more than \$75.00 total.
27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign? No.
28. Have you sought or received the pledge of any legislator prior to this date? No.
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? No.
30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.
31. Have you contacted any members of the Judicial Merit Selection Commission? No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted? Yes.

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

s/John Michael Baxley

Sworn to before me this 8th day of August, 2011.

Notary Public for South Carolina

My commission expires: 8/24/2011