

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

**Circuit Court
(Incumbent)**

Full Name: Alexander Stephens Macaulay
Business Address: Oconee County Courthouse
205 West Main Street
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Walhalla, South Carolina 29691
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1. Why do you want to serve another term as a Circuit Court Judge?

I trust that the experience I have gained over the past eighteen years on the bench and the previous twenty-four years at the bar might be of some benefit to my State, its citizens and all who are or might be affected by our system of justice, to include those of my profession.

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

I will be seventy-two on January 31, 2014.

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.

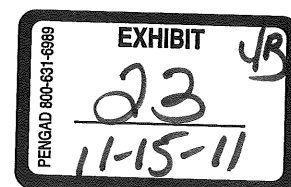
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Not to be permitted without authority. Individual communications with parties when necessary — scheduling, instructions for preparations of proposed orders and the like — are accomplished by the law clerk and staff with notice to all parties.

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

All parties are entitled to the confidence — and justice requires — that their matters will be fairly and impartially decided. Therefore, anytime my impartiality might reasonably be questioned, I disqualify myself from participating in the proceeding and advise the parties of the reason.

Because my last law partner, the late Honorable J. Pat Miley, passed away in 1987 and I practiced against all of my former associates as an attorney that has not been a particular concern. I do advise all parties of any prior association that might have any bearing on the matter under consideration and permit them, individually and after consulting privately



with their clients, to advise me if there are any reservations about my participating in the proceeding. If any at all, I recuse myself.

As a former "lawyer-legislator," who neither asked for nor received any special consideration from the judiciary — see *Gray v. Leeke*, 584 F. Supp. 650 (DSC 1984) — except for an occasional scheduling accommodation by agreement of counsel, and then not always, I give the same consideration to legislators that I give to all who appear in court — be they rich, poor, businesspeople, doctors, educators, caregivers, lawyers, what or who-ever.

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?

I would give all due deference to that party's request. See Question 6 Would you grant such a motion?

Yes, if there is some evidence of personal bias or prejudice or even if my impartiality might reasonably be questioned by reason of the matter disclosed. See *Patel v. Patel*, 359 S.C. 515, 523-526, 599 S.E.2d 114, 118-119 (2004).

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

I would recuse myself.

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

I limit the sharing and acceptance of individual gifts and hospitality to those relationships that are *B.J. ("Before Judge")*, and only where the gift or hospitality is commensurate with the relationship and occasion such as bar-related functions or activities devoted to the improvement of our profession and the administration of justice. I would not accept any benefit that could reasonably be perceived as intended to influence the performance of my judicial duties.

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

I would report it.

11. Are you affiliated with any political parties, boards or commissions that, if you were re-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? No.

13. How do you handle the drafting of orders?

At the time of hearing the matter, I enter a "Short Order," SCRC Form 4, and request the prevailing party to prepare a proposed order and either e-mail or send it on a disc so that it might be modified as appropriate where necessary. If the matter is taken under advisement, I request all parties to submit proposed orders in the same fashion. In either case, the party submitting the proposed order serves it on the other parties, Rule

5(b)(3), SCRCP, and I wait at least five days from receipt before signing any order so that any non-substantive matter might be addressed by the parties without prejudice to a motion under Rule 59, SCRCP.

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

My law clerk and I both take notes during the proceedings and a log is maintained concerning outstanding matters. This log is also maintained by the administrative assistant who keeps the required schedules for matters under advisement or otherwise need to be addressed.

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

Having served as an Assistant Attorney General in the executive branch, then, as a State Senator and, now, as a Circuit Court Judge, I am very aware of the separation of powers and responsibilities. The judiciary does not set or promote public policy but gives effect to that public policy set or duly adopted by the legislature and properly implemented by the executive; and, within statutory and constitutional limits, courts should defer to the legislature in construing their enactments so as to give effect to the legislative intent.

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?

I serve on the Circuit Court Judges' Advisory Committee and as an instructor for the New Judges' School, and I have been a lecturer for CLE Seminars at the USC Law School and a participant at seminars for professional associations, and a judge for the Bar Association's "We the People Competition" and high school mock trials and the Carol N. Ney National Mock Trial Tournament for colleges and universities. On occasion, I have spoken to community groups and high school and college classes about the law, legal system and the administration of justice.

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?

Not so much at this stage of my life. Even so, I do not take it home or out of the courthouse.

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:

More severely depending on their recidivism and the seriousness of the charge(s).

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

As adults within constitutional limits giving due consideration to issues of mitigation and rehabilitation.

- c. White collar criminals:

The punishment should include restitution and sure and certain punishment which may include public service.

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

Mitigation is always a consideration.

e. Elderly defendants or those with some infirmity:

A sentence should be constructed that punishes the offender and protects the public with consideration for any undue financial burden on the public.

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

The only investment I have is an office building that I rent to Oconee County, which I do not see as giving rise to any conflict of interest.

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. Do you belong to any organizations that discriminate based on race, religion, or gender?

I do not belong to any organization that practices invidious discrimination on the basis of race, religion or gender. I do belong to the Walhalla Presbyterian Church which requires that you be a Presbyterian to be a member.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes, and then some.

23. What do you feel is the appropriate demeanor for a judge?

A judge must be courteous, patient, open-minded, understanding, compassionate, modest, tactful — but firm when necessary, and able to relate and be considerate to all — litigants, witnesses, jurors, public, staff and attorneys.

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?

One should strive to apply such rules all the time, everywhere and with everyone.

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? No.

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? None.

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/Alexander Stephens Macaulay
Sworn to before me this 2nd day of August, 2011.
Notary Public for South Carolina
My commission expires: 1/20/2016