

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

Circuit Court
(New Candidate)

Full Name: Robert Marshall Paul Masella
Business Address: 917 Calhoun Street, Columbia S.C. 29201
1045 Oakland Avenue, Rock Hill, S.C. 29732
Business Telephone: 803-748-9990
803)-980-4400

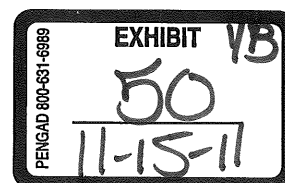
1. Why do you want to serve as a Circuit Court judge?
If given the opportunity, I would seek to serve the public as a member of our Judiciary and apply my experience and abilities to be a part of the administration of justice for the citizens of South Carolina.
2. Do you plan to serve your full term if elected? Yes
3. Do you have any plans to return to private practice one day? 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?

A judge is not a party to any action and should not be involved in conversation with either party regarding a pending or impending proceeding unless the communication is dealt with as prescribed by Canon 3(7)(a).

Ex parte communications are inherently unfair to the party absent from the communication. As such these communications undermine the integrity of and confidence in our judiciary.

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

When a former associate or law partner appears before a judge and there is an opportunity for the appearance of impropriety where at least one party has a legitimate concern that there could be an issue requiring recusal, that judge should take the appropriate measures to alert the court of that concern and disqualify himself or herself. As for lawyer-legislators, all judges are elected by lawyer-legislators and passing the case to another judge, who may also seek reelection, would not serve the same purpose as it would as in the case of lawyers who had a personal relationship with the judge prior to his or her election to the bench.



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?

Assuming that I disclose something that creates the appearance of bias to counsel and the parties, then if any of the attorneys or their clients independently decide that they would want me to disqualify myself, I would. However, if they all agree independently that I should not be disqualified from the matter, and I still feel I can participate without prejudicing either party, I would place on the record the agreement with the involvement of all concerned.

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

If there is a question as to my impartiality I would remove myself from that matter. The judge has no place in determining the outcome of the case outside the limits of the law.

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

I would accept gifts only as allowed under the Judicial Cannons.

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

I have assisted the Office of Disciplinary Counsel for the past eight years. The members of the bench and bar are responsible to uphold the rules and ethics under which we all operate together. If one of us conducts himself or herself in a manner other than what is expected and required, that lawyer or judge has made the decision to be reported. As for other judges, if I receive information indicating a substantial likelihood that a violation of the rules set out under the Judicial Cannons raises a substantial question of the judge's fitness, I would report the act to the appropriate authority. If an attorney violates the Rules of Professional Conduct contained in Rule 407, SCACR, and that violation raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer, I would notify the appropriate authority.

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 elected to the bench? No

13. If elected, how would you handle the drafting of orders?

There are various situations that dictate different methods of preparing an order. If there is a matter with a *pro se* litigant and a represented party, I believe the Court should prepare the order and distribute it to the parties. When there are two represented parties,

after deciding what the issue is and what the applicable law is, I would prepare a memorandum and distribute it to both parties requesting that the prevailing party prepare an order pursuant to my instructions.

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

My office meets on a regular basis to discuss our current cases and schedule what needs to be completed to move the case forward. When I was a law clerk, we maintained a list of cases and the progress on each case. I would have my office keep a similar type of schedule as we currently maintain in my law office. I would have my administrative assistant keep a list of the cases we are responsible for and insure the cases are handled in a timely manner.

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

Circuit Court judges are to follow the law as laid out by the legislature and judicial precedent. Public policy decisions are made by the Supreme Court, not trial courts. Our system does not intend for judges to be activists, but to follow the letter of the law.

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 I were fortunate enough to be elected to our State's judiciary, I would make myself available to speak to appropriate groups and make myself available to teach students about the operation of our court system.

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?

I believe the service of a judge does include pressure; however, I also realize that the practice of law involves long hours and stressful adversarial confrontation. I would continue to maintain my relationships with my spouse and children as I have as an attorney.

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: As a prosecutor the repeat offenders were the defendants I paid great attention to. I believe that good people make bad decisions and sometimes these people make more than one mistake. However, if someone consistently ignores the law, they should accept the greater punishments they will receive as a result of their actions.

b. Juveniles (that have been waived to the circuit court):
Although this presents an emotional issue, if it is determined that

the juvenile knew the difference between right and wrong and that they understood their actions, I would treat them as I would an adult in a similar circumstance.

c. White collar criminals:

These crimes can cause some of the most serious damage to victims. Many victims have lost life savings and the security they took a lifetime to build. The sentence would be determined by the crime. I do not distinguish between a criminal who hurts a victim physically and one who is sophisticated enough silently to commit their crime which also injures.

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

Every defendant should be afforded the opportunity to present mitigation and show why they are deserving of an opportunity for a second chance. If defendants could benefit from education and training that would help keep them from committing criminal acts in the future, depending on the circumstances, their background could be considered.

e. Elderly defendants or those with some infirmity:

Simply because someone might cause the state additional expense to care for a defendant who is elderly or infirmed, these defendants need not be given additional consideration if the crime they committed can be repeated by them or was committed by them in their current condition. For example, if an elderly or infirmed person kills another and does so knowingly and is prosecuted for that crime, that person has committed murder and should be sentenced according to the law.

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

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?

To be firm, kind, patient, fair and understanding.

24. Would the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or would these rules apply seven days a week, twenty-four hours a day?

A judge is someone the public will recognize. I would act with an appropriate demeanor at all times.

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 pro se litigants?

Cannon 3(B)(4) dictates that a judge shall be patient, dignified and courteous to all before them. Judges have no reason to become angry but should perform the functions of their position without allowing their emotions to become involved.

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. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? N/A
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?

Yes, when I requested the Judicial Merit Selection Commission's packet to apply for this position, I spoke with Ms. Shuler about retrieving the application materials.

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.

Robert Marshall Paul Masella

Sworn to before me this 10th day of August, 2011.

Notary Public for S.C.

My Commission Expires: 9/14/2017