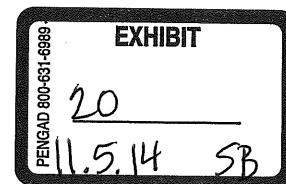


JUDICIAL MERIT SELECTION COMMISSION  
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:  
Circuit Court, At-Large, Seat 5

1. NAME: The Honorable J. Mark Hayes, II  
BUSINESS ADDRESS: 180 Magnolia Street  
2<sup>nd</sup> Floor, Spartanburg, SC 29306  
TELEPHONE NUMBER: (office): 864-562-4144  
Date of Birth: 1958  
Place of Birth: Spartanburg, SC
3. Are you a citizen of South Carolina? Yes  
Have you been a resident of this state for at least the immediate past five years? Yes
5. Family Status: Single, Never divorced, No children.
6. Have you served in the military?  
No
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
  - (a) Wofford College, Sept. 1976 – May 1980 – BA cum laude, History;
  - (b) Mercer University School of Law, Aug. 1981–May 1982 (transfer to USC School of Law);
  - (c) USC School of Law, Aug. 1982 – May 1984 – JD;
  - (d) National Judicial College, Reno, Nevada, Oct. 2004, General Jurisdiction Courses.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.  
SC - 1984
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
  - (a) Undergraduate:  
Cum Laude Graduate  
Blue Key Society  
Phi Gamma Mu  
Sigma Alpha Epsilon fraternity, 4 years—held position of President and Vice-President  
State Student Legislature, Delegation Chairman, Attorney General  
U.S. Senate Intern, Senator Strom Thurmond, 1977  
Judicial Commission, junior year  
Judicial Commission chairman, senior year  
Campus Union Assembly, freshman and sophomore years;
  - (b) Law School:  
Finalist, USC Mock Trial  
Moot Court



Order of the Barrister  
International Moot Court Team.

10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

<u>Conference/CLE Name</u>	<u>Date</u>
(a) Trial and Appellate Advocacy Section Civil Law Update	01/24/14;
(b) Criminal Law Section – Part 2	01/24/14;
(c) Introduction to Court-Annexed ADR	09/13/13;
(d) 2013 Annual Judicial Conference	08/21/13;
(e) Spring Conference CLE	05/01/13;
(f) Trial and Appellate Advocacy Section	01/25/13;
(g) Part 2: Criminal Law Section	01/25/13;
(h) Civil Court Judicial Forum: Advanced	10/26/12;
(i) Trial & Appellate Advocacy Section	01/20/12;
(j) Part 2 Criminal Law Section	01/20/12;
(k) 2011 Annual Judicial Conference	08/17/11;
(l) Criminal Law Essentials	05/20/11;
(m) SC Circuit Court Judges' Conference	05/04/11;
(n) Trial & Appellate Advocacy Section	01/21/11;
(o) Criminal Law Section	01/21/11;
(p) 2010 Judicial Conference	08/18/10;
(q) 2009 Annual Judicial Conference	08/19/09;
(r) Judges Conference	05/06/09;
(s) 24 <sup>th</sup> Annual SC Criminal Law Update	01/23/09.

11. Have you taught law-related courses or lectured at Bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.

- (a) Spartanburg County Bar Association CLE, Genetic Privacy and The Fourth Amendment: Unregulated Surreptitious DNA Harvesting, Panelist, Wofford College, Spartanburg, SC, February 2014;
- (b) S. C. Magistrates Annual Training, presenter, "DUI in SC Legal Update: Video Recording Challenges and Expert Witnesses," West Columbia, S.C., November 2013;
- (c) ABA/NHTSA, panel related to the Assessment of SC Impaired Driving, July 2013;
- (d) Charlotte School of Law, Legends and Leaders in the Law, Speakers Series, November 2012;
- (e) National Business Institute, Civil Court Judicial Forum: Advanced Discovery and Trial Practice, Columbia, SC, October 2012;
- (f) SC Criminal Justice Training Conference, keynote speaker, N. Myrtle Beach, SC, November 2011. Training conference for members of the SC Probation and Parole Association, SC Law Enforcement Officers' Association, and SC Corrections' Association;
- (g) S.C. Bar-Continuing Legal Education Division, speaker: Criminal Law Essentials, May 2011; individual presentation topic: "Straight from the Bench";
- (h) SC Association for Justice (SCAJ), Auto Torts, speaker, Atlanta, GA, December 2010;

- (i) National Christian Forensics & Communications Association (NCFCA): Judge, NCFCA Finals of the Lincoln-Douglas Debate, Bob Jones University, Greenville, SC, June 2009;
  - (j) Trial Judge for the SC Bar Association Mock Trials, Upstate Division, February 2009;
  - (k) SC Bar Convention, Panel Member on Current Issues in Internet Crime, January 2009;
  - (l) Spartanburg Methodist College, School Law presenter, March 2008 and February 2009;
  - (m) National Judicial College workshop on Courts and the Media, Atlanta, GA, October 2008;
  - (n) Trial Judge for the Mock Trials for the S.C. Defense Attorneys Trial Academy, June 2007 and 2008;
  - (o) Wofford College Judicial Symposium, host and presenter: The Constitution: The Third Branch of Government, An Insider's View, September 2007; individual presentation topic: "The Judiciary and the Media";
  - (p) USC Upstate, Criminal Justice Class presenter, November 2007;
  - (q) SC Delegate to the State Trial Judges Conference Annual Meeting: Chicago, Illinois, 2005; Honolulu, Hawaii, 2006; and San Francisco, California, 2007;
  - (r) SC Budget and Control Board Insurance Reserve Fund: presenter to Government Lawyer Conference; individual topic presentations: Legislative Update, Lexington, SC, 2005, Ethics Update, 2006 and Ethics presenter 2010;
  - (s) SC Solicitor's Conference: presenter, Myrtle Beach, SC, 2004;
  - (t) SC Worker's Compensation Conference: presenter, Asheville, NC, 2003.
12. List all published books and articles you have written and give citations and the dates of publication for each.
- (a) "Ethics: A Thin Thread to Runnymede" as published in the Spring 2011 edition of the Voir Dire a publication of the American Board of Trial Advocates and also again featured in the Spring 2014 (cover) issue of The Justice Bulletin a publication of the South Carolina Association of Justice;
  - (b) "JOL Service" as published in the Fall 2013 edition of the Highway to Justice;
  - (c) "A Quick View of SC's DUI Videotaping Statute: The mandates and interpretations you need to know to represent your DUI client" as published in the May 2014 edition of the SC Lawyers.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) Admitted to practice before the State Courts of SC in 1984;
  - (b) Also admitted to practice before the Federal District Court and Fourth Circuit Court of Appeals in December 1984;
  - (c) Also admitted to practice before the United States Supreme Court since June 1994.
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.

- (a) From August 1984 to July 1985, I served as judicial clerk to the Hon. E. C. Burnett, III, then Circuit Court Judge for the Seventh Judicial Circuit of the State of SC;
  - (b) In August 1985 to December 1990, I became an associate with the general practice firm of Burts, Turner, Hammett, Harrison and Rhodes. After eighteen months, I was made a full partner in the law firm. Duties included general trial work in both civil and criminal matters. Shortly after becoming associated with the firm, I began developing a specialty area in education/school-related law;
  - (c) On January 1, 1991, the firm of Harrison and Hayes was established. The character of my practice became more focused on education law, appellate practice, and more complex civil litigation;
  - (d) In January 2000, the law firm of Harrison, White, Smith, Hayes, & Coggins was formed. My primary focus in the practice was complex civil litigation, appellate practice, education law related work, and assistance with complex criminal litigation. Partner until May 2003;
  - (e) In 2003, was elected by the SC General Assembly to his present position as SC Circuit Judge At-Large, Seat 5.
15. What is your rating, if any, by any legal rating organization, such as, Best Lawyers, Chambers, Legal 500, Martindale-Hubbell, Who's Who Legal, Super Lawyers, etc.?  
 Martindale-Hubbell rating was AV.
22. Have you ever held judicial office?  
 Elected April 9, 2003, to fulfill the unexpired term and subsequent full term of Gary E. Clary, retired; qualified May 22, 2003, re-elected February 2009, serving continuously.
23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) S.C. Electric & Gas Co. v. Aiken Electric Cooperative, Inc. and the S.C. Public Service Commission  
 This case involved a review of a decision of the PSC to allow an electrical cooperative the right to provide electricity to a newly constructed school even though only part of the property upon which the school facility was located was within the cooperative's geographic area. Legally, this case required an examination of the role of the PSC in deciding statutory construction and the circuit court's proper role in reviewing a decision made by the PSC. The case was affirmed by the Court of Appeals in an unpublished opinion, SC Jud. Dept. – Opinion Number 2005-OP-292.
  - (b) McSherry v. Spartanburg County Council  
 This case involved the Court reviewing a politically charged issue of a \$25.00 road maintenance fee adopted by a county council. Legally, the case dealt with a review of the County's procedure used in adopting the fee and the County's compliance with provisions of the Home Rule Act. Even though the Court and the Supreme Court's affirmation were expressly or implicitly critical of the method used by the County at its first reading, the adoption of the fee was upheld as legally sufficient. Interesting note as referenced in the Supreme Court's opinion, the County has since changed its implementation procedures. The Supreme Court's affirmation was issued on February 5, 2007 and can be found in Westlaw at McSherry v. Spartanburg County Council, 371 S.C. 586, 641 S.E.2d 431 (2007).

- (c) Cracker Barrel Old Country Store, Inc. v. J.C. Faw, Denny's, Inc., 2005-CP-42-604  
The 17-page order issued in this case came after a non-jury hearing that involved the interpretation and application of deed restrictions to a commercial area developed by the plaintiff in 1992. The defendant sought to use the property to establish a competing business in violation of the plaintiff's deed restrictions. Even though titled as a Summary Judgment Order, the case was factually intensive and the attorneys conducted a full trial on the issues. The order, therefore, reflects both a factual and legal analysis. In an unpublished opinion, No. 2007-UP-053, the Court of Appeals affirmed the order on February 7, 2007.
- (d) Smith v. NCCI, Inc. and Liberty Insurance Corp.  
This case involved a complex fact pattern where a white-collar employee sought Worker's Compensation benefits for both a back injury and a mental injury due to an injury back accident that occurred doing his job as an auditor for an organization related to the Worker's Compensation industry. Legally, the case required the application of the substantial evidence standard of review and application of S.C. Administrative Procedures Act to the decision made by the full Commission. The significance of the case, outside of the usual fact scenario for a Worker's Compensation case, lies with the mental injury claim. The case presented an extraordinary opportunity to revisit the law as it relates to recovery of benefits for mental injuries and the factual burden which must be met by the person claiming these types of injuries. The Court of Appeals affirmed the order in its opinion located at Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006).
- (e) Turner v. City of Spartanburg, William Barnett, III, et al  
This matter was designated as complex and specially assigned to me. The factual allegations of the case stem from a development project partly undertaken by the City of Spartanburg and private developers. When certain payments to the general contractor failed to be paid, a lis pendens was filed against the City and others for payment. My order dated June 19, 2006 supplemented my order of February 10, 2005. These two orders dismissed, initially, various individual defendants and, subsequently, the City of Spartanburg. The plaintiff had attempted to assert private cause of action against the City based upon S.C. Code section 29-6-250 which pertains to governments' construction projects and bonding requirements.

24. Have you ever held public office other than judicial office?

Appointed by County Council as a member of the Spartanburg Memorial Auditorium Commission, 1994 – 2003, Chair 2000 - 2003.

25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.

In March of 2013, I started service as a consultant with the American Bar Association (ABA) as a judicial outreach liaison officer (JOL) assigned to work with the National Highway Traffic Safety Administration (NHTSA) southeastern region. I was told a judge from Florida with whom I had previously worked with on a Drunk Driving Prevention Program had submitted my name to the ABA for consideration. The southeastern region consists of the states of Florida, Georgia, Alabama, South Carolina and Tennessee. The goal of the JOL program is to raise awareness of highway safety issues in order to reduce traffic fatalities and injuries by improving evidence base sentencing

practices and to also assist with the establishment of drug and alcohol courts. South Carolina is one of only two states that have not been able to reach NHTSA standard of having a fatality rate of less than 0.93 deaths per 100 million vehicle miles. My understanding is that I was selected in part because I was from SC and could focus most of my attention on SC since SC did not have its own State JOL. In SC, I worked with S.C. Department of Public Safety, Director Phil Riley and his deputy director Ed Harmon. From the ABA national office I worked with Gina Taylor and from NHTSA office in Atlanta I worked with Sandy Richardson. I participated in the Impaired Driving Program Assessment and organized educational training for over 600 magistrate and municipal judges in SC. In January 2014, I ceased my service as Regional JOL. However, I have continued to be of service to the Department of Public Safety and Bob McCurdy at SC Court Administration to coordinate and arrange for educational programs for SC magistrate and municipal judges.

The ABA's contract did provide compensation, however, I did not keep the money. Working with Phillip Hudson of Spartanburg Alcohol and Drug Abuse Commission (SADAC), two programs which deal with alcohol and drug abuse education and awareness were identified. Donations were made to the Community Alcohol and Drug Coalition Program and to the TACT program. The TACT program donation, which deals with teenage alcohol issues, was especially beneficial as their funding had expired and, I was informed, the donation allowed the program to remain functional into their next fiscal year. A third donation was also made to the SC Bar Foundation fund which addresses lawyers with substance abuse issues.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?
  - (a) Supreme Court, Seat #5 (2007), qualified, not nominated;
  - (b) Court of Appeals, Seat #6 (2007), qualified, nominated, not elected;
  - (c) Court of Appeals, Seat #9 (2008), qualified, nominated, not elected.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office?
  - (a) 1980-81: First National Bank of SC. Management trainee and loan officer;
  - (b) In law school, I worked for two years as a law clerk with the law firm of O. Fayrell Furr providing legal research and office clerical duties;
  - (c) The summer after my first year of law school, I worked as a clerk in interviewing criminal defendants to determine their eligibility for the public defender in Macon, Georgia;
  - (d) This assignment was made through the Governor's Office of Georgia;
  - (e) In college and high school, I worked several positions as a store clerk, house painter, electrician helper, and ski rental clerk.
28. Are you now an officer or director or involved in the management of any business enterprise?

No.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest.

None.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state

law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law?

No.

32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute?

No.

33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy?

No.

34. Have you ever been sued, either personally or professionally, that is, have you ever been named as defendant or respondent in any court of law?

An inmate serving a life sentence, Mr. Robert Koon, recently included me as party in a civil suit wherein he also named as defendants, Brandy McBee (the Cherokee County Clerk of Court) and Desiree Allen (an Assistant Director of the SC Court Administration). Mr. Koon had a lengthy criminal history that eventually resulted in a life sentence being imposed on him by Judge John Hayes probably more than twenty years ago. Since his incarceration, he has repeatedly filed post-conviction relief applications in state court. In 2007, I granted the Attorney General's request to conditionally restrict any future filing of post-conviction relief. To my knowledge, Mr. Koon did not appeal the 2007 order.

In the recently filed suit, Mr. Koon seeks to have the federal court direct me, the Clerk of Court and the SC Court Administrator to allow his new post-conviction relief application to go forward so he can now collaterally challenge his prior conviction due to some type of allegation that the original jury, judge, and/or some law enforcement official had an improper association to the Mason or Masonic Lodge.

A Federal Magistrate's has recently issued his Report and Recommendation which analyses Mr. Koon's complaint. The Magistrate's recommendation is for a summary dismissal of Mr. Koon's complaint.

36. Have you ever been investigated by the Department of Social Services? Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect?

No.

37. If you are in private practice, are you covered by malpractice insurance and, if so, how long have you carried malpractice insurance?

N/A.

38. Are you active on or a member of a social media or Internet site or have you, to your knowledge, been featured or depicted on a social media or Internet site, such as, Facebook, LinkedIn, Twitter, etc.?

I do not use social media and I am not aware of being featured on a social media internet site.

39. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)?

No.

40. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal?

- No.
41. S.C. Code § 8-13-700 provides, in part, that “[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.
- None.
42. S.C. Code § 8-13-765 provides, in part, that “[n]o person may use government personnel, equipment, materials, or an office building in an election campaign.” Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions.
- None.
43. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek.
- None.
44. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship.
- None.
45. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened?
- None.
46. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
- No.
47. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy.
- No.
48. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate?
- No.
49. List all Bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) ABA Conference of State Trial Judges – former chair and vice chair of Committee on Fair and Impartial Courts;
  - (b) SC Circuit Judges Conference;
  - (c) ABA Judicial Division Member;
  - (d) American Judges Association;
  - (e) SC Bar Association.



50. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) 2011 Justice Claude A. Taylor Award Distinguished Service Award presented by the Spartanburg County Bar Association;
  - (b) 2004–10 The Supreme Court Commission on Continuing Legal Education and Specializations;
  - (b) 1986–87 Significant Contribution to Public Schools in SC Award by the SC Board of Education;
  - (c) Former Chairman of Piedmont Area Boy Scott of America.

51. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek.

Serving as a circuit court judge for the State of SC continues to be a great personal privilege and a high professional honor. Every time I take the bench, I am humbled by the weight of the authority the General Assembly has vested in me by selecting me to be a circuit judge. I strive to honor the General Assembly's trust and confidence by conducting myself on the bench in a manner that is respectful to any litigant who may come before me, regardless of the litigant's position in society.

I also strive to honor the General Assembly trust and confidence by engaging in extra-judicial activities that promote a better understanding of the rule of law and of our justice system. I am very proud of the educational training for over 600 magistrates and municipal judges that was conducted. I hope to write more articles and essays on law related topics, which will also encourage lawyers to promote their profession. I am most proud, however, of the hundreds of high school students who have written essays as part of the Law Day Essay Program. These students represent our state's and nation's future. My hope is that seeds of civic responsibility have been planted in each of these young adults by writing their essays. By my investing in this essay project, I believe that our state and nation will harvest more civic-minded individuals who have a better appreciation of the rule of law and respect for our great justice system.

52. References:

- (a) Fred Williams  
NBSC  
150 East Henry Street  
Spartanburg, SC 29306  
864 -591-6016
- (b) James Burchfield  
Raymond James Financial Services  
101 West Saint John Street, Suite 308  
Spartanburg, SC 29304-6383  
(864) 573-5605
- (c) Steve Jobe  
1701 Skylyn Drive  
Spartanburg, SC 29307  
864-582-7539

- (d) Ginger Shuler  
220 Montgomery Drive  
Spartanburg, SC 29302  
864-706-5233
- (e) Chase E. Furnas  
853 John B. White, Sr. Blvd.  
Spartanburg, SC 29304  
(864) 585-4582

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

Signature: J. Mark Hayes, II  
Date: July 17, 2014