

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

Circuit Court
(Incumbent)

Full Name: James Mark Hayes, II

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1. Why do you want to serve another term as a Circuit Court Judge?

I continue to have a strong desire to serve the people of South Carolina as a Circuit Court Judge. During my past terms, I feel I have worked diligently to assure all parties before me were treated fairly and with respect. It has been a high honor to serve on the South Carolina trial bench and I hope to continue for an additional term. The position remains professionally and personally rewarding. I also wish to continue my efforts of fulfilling my ethical obligation of promoting the rule of law and a better understanding of the judicial branch of government. I continue to work with the Senior Division of the South Carolina Bar as the coordinator of the annual Law Day Essay contest. This contest is open to all high school aged children in the state. Each year for the past six years an essay topics based on the ABA's selected Law Day theme has been presented to high school age students. This program has become a great public relations tool for the Bar and hundreds of students have been exposed to studying and writing about a variety of constitutional topics in an effort to promote civic responsibility and the rule of law. Over the last several years a conservative estimate is that almost 400 high school aged students have participated just from Spartanburg and Cherokee Counties.

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

Yes.

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

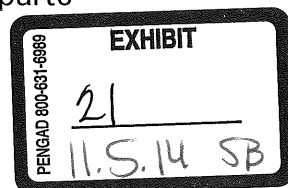
None at present.

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?

There are only limited circumstances where *ex parte* communications are allowed. Most notable is when the judge, in his administrative capacity, must approve fees and cost in indigent criminal cases, being asked to approve certain types of search warrants, or is being asked to issue a TRO as allowed pursuant to SCRPC 65. Other than those instances where *ex parte*



communications are required or allowed, my philosophy is to not engage in them.

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

In the almost twelve years on the bench, I have never faced a recusal issue involving a lawyer-legislator, former associate or law partner. I believe my philosophy on recusal is consistent with the S.C. Code of Judicial Conduct which provides in part that a judge shall avoid impropriety and the appearance of impropriety in all the judge's activities. The code requires a judge to disqualify or recuse himself in a proceeding in which the judge's impartiality might reasonably be questioned.

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?

In such a situation, I would give appropriate deference to the party requesting the recusal. It is difficult to say that I would or would not grant the motion to recuse. However, the question seems to presuppose that I have unilaterally disclosed the information that created the appearance of bias previously unknown by the parties. Thus, while I may believe it would not actually prejudice my impartiality, I have probably also concluded that the potential bias is of such a degree, that one party or the other could reasonably find an appearance of impartiality exists due to the bias. Given the importance I place on the litigant having faith and confidence that the judicial system is fair, if either party requested the recusal, there would be a significant likelihood the motion would be granted. If both parties agreed for me to hear the matter, I would place their consent on the record.

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

If such a situation arose, I would disclose the financial or social matter on the record to the parties. If I had any doubt that the issue would cause me to question the decisions I may be required to make in the case, I would recuse myself. Otherwise, I would hear from the litigants and most likely recuse myself if one of them had a reasonable belief that the appearance of impropriety existed.

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

My personal standard is to accept gifts or social hospitalities only from family members or friends, and that are not being extended to me for a reason associated with my position.

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

I would conform the situation to be consistent with S.C. Appellate Rule 407, Rules Governing Professional Conduct 8.3, which requires a lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer and other respects shall inform the appropriate professional authority. This same rule applies to the reporting of judges when the wrongful judicial conduct raises a substantial question as to the judge's honesty, trustworthiness, or fitness for the office and other respects.

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?

Generally I issue a brief statement by letter or email about my ruling and how I came to make the decision. I then request a proposed order from one of the lawyers. Once the proposed order is submitted, I also accept remarks from the opposing party. I will then review the submissions and make final editions to the order before signing and filing it.

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

My administrative assistant maintains an office calendar where deadlines are registered. Also, after conducting hearings I maintain dockets that contain matters pending. Monthly, my law clerk reviews with me any open or pending matters as he is responsible for filing the monthly report with court administration of all matters pending in excess of 30 days.

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

My belief is that judicial restraints from the bench should be observed in regards to judicial activism. Public policy is best set by the publicly elected officials and great deference should be given to setting public policy as directed by the General Assembly.

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 plan to author more articles and more public speaking events either through legal educational programs or lectures.

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?

The pressure of serving as a Circuit Court judge has not caused any personal strain in my life. I credit this in large part to the support and many prayers from my family and friends, and I plan to continue to seek their support and prayers.

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 is to examine prior sentences and determine what new approaches may be used so that the pattern of re-offending stops. By being a "repeat" offender, the defendant generally has demonstrated an inability to conform his or her behavior to society's norms. As a result, the subsequent sentence imposed will most likely be more harsh.

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

Juveniles present opportunities to explore sentencing options that are specific to the young age of the offender such as a Youthful Offender sentence. My belief is that such sentences lead to rehabilitation. Also in the juvenile cases which are waived to Circuit Court, it will be interesting to receive direction from the S.C. Supreme Court in applying the U.S. Supreme Court decision of Miller v. Alabama in addressing LWOP sentences in juvenile cases.

- c. White collar criminals:

I do not believe white collar criminals are treated differently in my court. However, the issue of restitution usually is more significant than with other criminal cases (the damage to the victim and society is driven by monetary amount of the crime) Therefore, the sentence in white collar cases can be not only to punish, but also aimed at making the victim whole.

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

For every person that comes before me to be sentenced, a plea summary sheet is prepared which contains some basic information about the person. Historically, it is not uncommon for me to sentence approximately 1,200 to 1,500 individuals a

year. From the information collected, a few common threads exist in these individuals. First is a lack of formal education; second, the relatively young age at which these individuals are having children; third, the fact that these individuals are not married but yet are having multiple children; and fourth, the lack of employment or, if employed, the apparent lack of substantial employment in relation to the obvious family responsibility as represented by the existence of one or more children. Frequently, a defendant's social and/or economic status is considered by me in attempting to prevent recidivism by crafting a sentence that requires them to obtain a GED or finish their high-school education.

e. Elderly defendants or those with some infirmity:

Generally, it is the nature of the criminal offense which substantially drives the sentence imposed. However, the age of the defendant, and especially if elderly, can have a significant influence on any active incarceration, given that an elderly person may spend the remainder of his or her life in jail as a result of the offense. I am also mindful of a person's infirmities and resulting strain that may be placed on the Department of Corrections. If appropriate, alternative sentencing than lengthy incarceration in the department of corrections are considered, including, but not limited to home detention.

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?

Even though the canons may allow a judge to continue to hear these types of matter, I would disclose such *de minimis* financial interest and obtain the parties consent before proceeding.

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?

An even-tempered demeanor that enhances confidence in the judicial process.

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?

Always, but especially on the bench and in chambers.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? No. 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? No. 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/ Mark Hayes _____

Sworn to before me this 18 day of July, 2014.

Cynthia L. Parris _____
(Print Name)
Notary Public for South Carolina
My commission expires: April 5, 2020