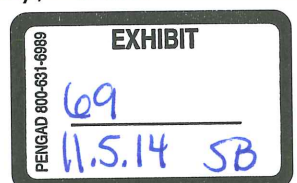


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Administrative Law Court
(New Candidate)

Full Name: Harold W. Funderburk, Jr.
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1. Do you plan to serve your full term if elected?
Yes
2. Do you have any plans to return to private practice one day?
It is possible but would depend on my personal and family circumstances at the time.
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
The canons permit such communications for scheduling, handling administrative issues, or addressing emergencies. However, to avoid any appearance of impropriety, I would prefer to adhere to the general prohibition that does not allow a judge to initiate or consider communications made without notice to or out of the presence of other parties.
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
Again the appearance of impropriety governs. If my impartiality could reasonably be questioned, I should recuse myself. Of course, there are specific circumstances when recusal is required because of personal bias, personal knowledge of the facts, or in matters that involve issues, clients, or attorneys with which I have been closely associated recently. Some circumstances require disclosure that gives the parties an opportunity to consider and request recusal. To avoid unnecessary delay, I would review cases assigned to me to ascertain any obvious reasons that could require or justify recusal. Just having a lawyer-legislator appear before me would not require recusal unless I had a close and/or recent relationship with that person.
6. 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?

Yes, if there were reasonable cause, I would grant the motion to protect the integrity and maintain public confidence in the impartiality of the court.

7. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would not put myself in circumstances that would allow me to become indebted to lawyers, individuals, or entities that might come before my court. Normal social hospitality involving family and friends not likely to come before the court should not be affected. Any gifts whose value exceeds or comes close to the threshold would be reported as required.

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

I would encourage the individual to self-report. If the Rules of Professional Conduct or the Standards of Judicial conduct required, I would also report the misconduct (assuming the reality of the misconduct).

9. Are you affiliated with any political parties, boards or commissions that, if you are elected, would need to be re-evaluated?

I don't believe that I am. If it turns out that I am, I would resign from any position or organization that negatively impacts my position as a judge.

10. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations?

I have contributed to various charities, churches, and community organizations, but I have not been involved in any fund-raising activities.

11. How would you handle the drafting of orders?

I have drafted orders and decisions for others for twenty-five years, it will be a joy to write them for myself.

12. What method would you use to ensure that you and your staff meet deadlines?

Anything that I assign to someone or take on myself will have a clear due date that will be entered in a master calendar with appropriate reminders so that cases will generally follow a "first in, first out" process that will assure that no backlog accumulates among cases assigned to me.

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

A judge is charged with applying the law to the facts before the court and making decisions accordingly. In this role, a judge may be required to interpret the actions or intentions of the legislature. Where

a law states a public purpose or policy, a judge may use that information as an interpretive guide, but it is not the job of a judge to write or create law in contravention of a statute or the tradition of the common law.

14. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system?

I would continue to take advantage of opportunities to speak and educate both attorneys and the public about the legal process and the value of the legal system.

15. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?

No.

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

I don't believe so. If something did arise, I would disclose my interest and, depending on the circumstances, step aside.

17. Would you hear a case where you or a member of your family held a de minimis financial interest in a party involved?

I would disclose the interest and allow the parties to decide. If I felt that I could not be impartial or that the apparent bias rose to a level that invokes Canon 2, I would recuse myself. What might be de minimis to me might not appear so to individuals, and I would take that into account.

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

No.

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

Yes.

20. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas.

Most of my career as an attorney was in the area of administrative law, and about 75% of the cases I handled over twenty-five years involved cases that are now heard by the Administrative Law Court. Prior to my retiring from the Dept. of Employment and Workforce, I handled several cases before the ALC and one as a private attorney since my leaving.

I worked with Judge Kittrell to establish the South Carolina Administrative and Regulatory Law Association and served on its initial board.

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

A judge must treat with respect all who come before the court and insist on the dignity of the proceeding as a way of giving all parties, especially the self-represented, a full and complete opportunity to have their say. Also, a judge needs to develop and maintain a sense of humor and a personality that encourages cooperation without the use of fear.

22. 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?

While I am more relaxed in social settings and at home, the courtroom requires a certain level of dignity that cannot be turned on and off but must be practiced. That said, as a representative of the court, a judge is always responsible for how his or her behavior reflects on the court and the legal system in general.

23. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

No. Anger reveals a lack of restraint. While a judge must be firm and command respect, such command results from demeanor and control, not from threats and expressions of anger.

24. 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 at this time.

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

N/A

26. Have you sought or received the pledge of any legislator prior to this date?

No.

27. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No.

28. 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.

29. Have you contacted any members of the Judicial Merit Selection Commission?

No.

30. 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/ Harold W. Funderburk Jr.

Sworn to before me this 6 day of August, 2014.

Ashley Ruth-McDuffie

Notary Public for S.C.

My Commission Expires: May 30, 2024