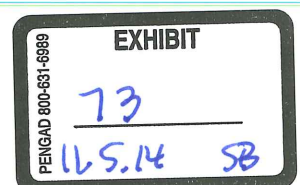


JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

**Supreme Court/Court of Appeals
(Incumbent)**

Full Name: John Cannon Few
Business Address: 1015 Sumter Street
Columbia, SC 29201
Business Telephone: (803) 734-1925

1. Do you plan to serve your full term if re-elected?
Yes
2. Do you have any plans to return to private practice one day?
No
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?
My behavior in this regard is governed by Canon 3 B (7) of the Code of Judicial Conduct, which provides I "shall not initiate, permit, or consider *ex parte* communications," except under the limited circumstances set forth in the Canon. Yes, I can envision tolerating *ex parte* communications in those specific limited circumstances set forth in Canon 3 B (7).
5. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
My behavior in this regard is governed by Canon 3 E of the Code of Judicial Conduct, which provides that I shall disqualify myself "in a proceeding in which [my] impartiality might reasonably be questioned." I am also very conscious of Canon 3 B (1), which *requires* a judge to hear a case unless disqualification is required.
I do not recuse myself when lawyer-legislators appear in front of me.
My only former associate or partner is my father, and I am automatically disqualified in his cases under Canon 3 E (1) (d) (ii).
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?

Whether or not something would "actually prejudice [my] impartiality" is not the primary consideration in this situation. The standard is whether my "impartiality might reasonably be questioned." The question states the "something" does have "the appearance of bias." Therefore, my recusal would be required whether it was requested or not, unless my disqualification were waived by all parties as provided for in Canon 3 F.

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

The acceptance of gifts and social hospitality is governed by Canon 4 D (5). I have set the standard of strict compliance with this Canon, and I will continue to adhere to that standard.

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

If I received information indicating a "substantial likelihood" of misconduct, then I would comply with Canon 3 D (1) or (2).

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

No

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

No

11. How do you prepare for cases that come before you?

I have cases "come before" me in four general categories: (1) chambers cases where I am assigned to be the author; (2) chambers cases where another judge on my panel is assigned to be the author; (3) staff attorney or "submitted" cases; and (4) motions. I approach each category with the same determination to understand the true issues in the case and resolve it according to law.

Chambers cases are those that have been selected by the court for oral argument. Typically, these cases are assigned by the clerk of court to a panel of judges sixty days before the term of court begins, and oral argument will be held sixty to seventy-five days after assignment. My preparation for these cases begins with my senior law clerk's brief review of them within days of their assignment. He or she then allocates the cases among my clerks for preparation. Each clerk will then spend a couple of hours with the case to gain a basic understanding the facts, the issues on appeal, how those issues arose in the proceedings below, and the legal principles that appear to

govern the appeal. Usually within a week of assignment, we have a conference with me and all my law clerks present in which each clerk explains their case. From this discussion, I begin to identify the true issues in each case. This is important because of the limited role of the Judiciary. Recognizing this limited role, a court must do as little as possible to resolve the case or controversy before it. In order to restrict the action of the court in this manner, it is essential to identify the true issues before the court.

I then direct my law clerk assigned to the case as to how I believe he or she should proceed to analyze the case. This includes the task of collecting, understanding, and discussing with me, all of the case and statutory law that could relate to the resolution of the issues we have identified. For the next two to three weeks, my law clerk and I have frequent conferences by phone or in person on our progress in understanding the case. During this time, in cases where I am the assigned author of the opinion, my law clerk is working to prepare a bench memorandum. As needed during this time frame, I will read the briefs or portions of the record. Through the course of these discussions, I lay out the structure of the bench memorandum I believe should be written, and my law clerks to work with me to fill in that structure with the argument and discussion that appears necessary to resolve the case. Approximately three to four weeks into our analysis, my law clerk gives me a draft bench memorandum based on our discussions of the case and the law clerk's factual and legal research. At that point, I carefully read the draft bench memorandum, and reread the briefs and those portions of the record helpful to gain a full understanding of the facts, issues, and legal principles applicable to the case. I then have a series of meetings, phone conferences, and exchange of edits to the bench memo designed to enable my law clerk to finalize the bench memo and distribute it to the panel. We try to have our bench memoranda finished one month before oral argument.

For chambers cases where I am not assigned to be the author, the preparation is the same except the conversations between my law clerk and me are less frequent, and my law clerk does not prepare a formal bench memorandum. However, my law clerk usually prepares a shorter memorandum containing our thoughts on identifying the true issues and the legal principles that appear to govern the resolution the appeal, and a discussion of the steps I need to take to finalize preparations for oral argument.

For all chambers cases, whether I am assigned to be the author or not, I renew my work on the case in the days before oral argument. That work includes, as the circumstances of the individual case warrant, re-reading the briefs and record, and studying the applicable legal principles. In particular, I try to be prepared to discuss prior case law in detail with the lawyers at oral argument. I often require my law clerks to play the role of "devil's advocate" to identify any problems in the position I have initially taken.

Staff attorney cases are those that have been selected by the court to be submitted to a panel without oral argument. Thus, they are frequently called "submitted cases." The reason these cases are submitted without oral argument is that the Chief Staff Attorney, in consultation with me as she deems necessary, has determined the cases can be decided under established precedent, and thus oral argument is not necessary. These cases come to a panel with a bench memorandum already drafted by a staff attorney in consultation with the Chief Staff Attorney. I begin my preparations for resolving staff attorney cases by reading the bench memorandum. From that memorandum I determine the approach I should take to the briefs and record.

All motions are initially worked up by either a staff attorney or someone in the clerk's office. When those motions are brought to me, the staff attorney (or the clerk of court or deputy clerk of court) who worked it up explains to me in person or on the phone what the motion is and how it fits in the context of the case. We then discuss the motion and the applicable legal principles. Motions range in complexity from motions for extension of time, which require little or no legal analysis, to complicated motions to dismiss, which can take days to resolve.

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

My philosophy is that I do not engage in judicial activism.

"Judicial Activism" is a term usually used to mean "making law," or to otherwise allow the work of the court to go beyond the properly limited role of the judiciary. I do not engage in Judicial Activism. Making law is for the Legislative Branch of Government. Judges and courts resolve actual cases or controversies, and in doing so they interpret and apply existing law.

As far as setting and promoting public policy, I believe it is the province of the Legislative Branch, and to a lesser extent the Executive Branch. To the extent there is any policy-making role for the Judicial Branch, that role is filled by the supreme court. Many times it is necessary for lower courts to *discern* public policy in order to resolve cases or controversies, but it is not the province of court of appeals judges to “set” public policy. When public policy set by the Legislature has an impact on the resolution of a case before a judge, it is the responsibility of the judge to apply that public policy.

13. 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 speak frequently in Continuing Legal Education seminars, and to community groups. I intend to continue doing that. Being Chief Judge of the Court of Appeals has brought opportunities to represent South Carolina in other parts of the country as well. Since joining the court of appeals, I have given speeches in California, Arizona, North Carolina, and Georgia. I have also given speeches to national and regional groups meeting in South Carolina. Further, being Chief Judge has put me in a stronger leadership position with the Bar of our State. I have used that leadership position to increase my efforts to improve the quality of the Bar, both in terms of the qualifications of its lawyers, and in terms of having a positive impact on the people they represent.

My experience teaching law at the USC School of Law and the Charleston School of Law has refocused my dedication to the duty of judges and lawyers to improve and teach the law. I plan to continue to seek opportunities to teach law.

14. 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?

Serving as a judge definitely causes a strain on person relationships.

I handle it the best I can. As far as my children are concerned, I try to make them understand the legal process, and the limited role the judicial system plays in government.

As far as friends are concerned, when I first became a Circuit Judge I remember wondering how ruling against lawyers I knew might affect my personal relationships with them. I was resolved, however, that I would never allow any personal relationship to affect a ruling of mine in any way. I find that my

resolve to do this improves my personal relationships with lawyers, even when I rule against them, because it earns their respect.

15. Are you currently serving on any boards or committees? If so, in what capacity are you serving?

I serve on the Duke University Alumni Advisory Committee for the upstate. All I do in that capacity is to interview high school seniors who have applied to Duke. I also serve in the unofficial role of President of the Duke Club of the Upstate, which specifically does not involve any fundraising. I am simply a contact person for Duke alumni who live in this area, and from time to time I schedule events for Duke alumni in our area.

16. Please describe your methods of analysis in matters of South Carolina's Constitution and its interpretation by explaining your approach in the following areas. Which area should be given the greatest weight?

- a. The use and value of historical evidence in practical application of the Constitution:

It is important in interpreting the Constitution, or any other historical document, to understand the context in which it was written. It would also be important to understand the manner in which the Constitution has been interpreted in the past, and the effect that interpretation has had on the law and on the State.

- b. The use and value of an agency's interpretation of the Constitution:

I do not believe it is important to understand how an agency has interpreted the Constitution.

- c. The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

These documents could be particularly useful in understanding the context in which the Constitution was written, and therefore its intended meaning. Of the three listed, this would ordinarily be given the greatest weight.

17. Is the power of the South Carolina General Assembly plenary in nature unless otherwise limited by some specific Constitutional provision?

Yes

18. Presuming that the three branches of government have plenary power for their responsibilities, do any other levels of government (i.e. local governments) have plenary authority, or do all grants of authority to other levels of government flow from the state level in our Constitution and statutes?

Local government has no power except what is specifically granted to it by the State. The South Carolina Constitution provides that all political power is vested in and derived from

the people. That power is placed in State government through the State Constitution. In ratifying the United States Constitution, much of that power was delegated, or transferred, to the federal government. Any power that was not specifically delegated to the federal government was retained by the State. Local government derives its power from the State. Other than that power specifically given to local government through the Constitution or statutory law, local government has no power. The power that has been granted to local government through "Home Rule" is broad. State law allows local government to do most anything its elected officials believe is appropriate, as long as it is not inconsistent with State law or the Constitution. However, that broad power comes from the State, and does not exist in any manner independent of the State.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No
20. Do you belong to any organizations that discriminate based on race, religion, or gender?
No
21. Have you met the mandatory minimum hours requirement for continuing legal education courses?
Yes
22. Have you written any scholarly articles?
Since joining the court of appeals, I have published the following, which could possibly be characterized as "scholarly:"
 - (a) *The Courage of a Lawyer*, ABA Litigation Journal, Winter 2013
 - (b) *artofevidence*, <http://artofevidence.wordpress.com/>
This is a blog I publish for my students, formerly at the Charleston School of Law, currently at the USC School of Law
 - (c) *Appellate Advocacy— "Speaking Frankly"*, Foreword to Charleston Law Review, volume 5 number 1 (Fall 2010).
23. What do you feel is the appropriate demeanor for a judge?
A judge should be patient and courteous in court and should make a serious effort not to appear biased on issues or toward parties.
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?
Seven days a week, twenty-four hours a day. A judge is required to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
25. Is there a role for sternness or anger with attorneys?

There is no role for anger. Though judges are human, and are prone to feel emotion such as anger even when sitting on the bench or meeting with lawyers, the decisions a judge makes should never be based on anger. Judges owe a duty to control anger in such a way that litigants and lawyers do not see it, even if the judge feels it, and in such a way that anger never controls a judge's decision.

There can be a role for sternness in the sense of firmness. In some situations, lawyers and litigants need to see confidence and resolve in the demeanor of the judge. This is especially true for the presiding judge in an appellate proceeding. But there is never a need for a judge to show sternness in a condescending or demeaning way. Judges must respect the role that lawyers, litigants, witnesses, court staff, and others play in the judicial system, and make every effort to treat them with respect and dignity at all times.

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? If so, give details

I have not requested anyone to contact a member of the General Assembly on my behalf in regards to this reelection for the Chief Judge of the Court of Appeals. Of course, in my initial election into the Circuit Court in 2000, in my reelection bid in 2006, in my bids for the Supreme Court in 2008 and 2009, and in my bid for Chief Judge in 2010, I did so after the point in time when the rules allowed me to.

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

I have not contacted any member of the Judicial Merit Selection Commission since the vacancy for reelection to this seat was announced. I have not initiated contact with any member regarding reelection to this seat, even before it was announced. I did have a conversation with my representative—Bruce Bannister, a member of the Commission—in which we briefly discussed the fact that I planned to run for reelection.

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/ John Few

Sworn to before me this 5 day of August, 2014.

Patricia Howard

(Print name)

Notary Public for S.C.

My Commission Expires: July 24, 2016