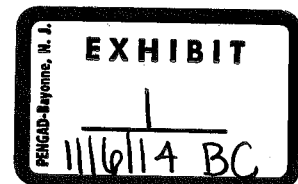


JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying:
Circuit Court, Fifteenth Judicial Circuit, Seat 2

1. NAME: The Honorable Benjamin H. Culbertson
BUSINESS ADDRESS: P.O. Box 479
Georgetown, SC 29442
TELEPHONE NUMBER: (office): 843-545-3030
2. Date of Birth: 1959
Place of Birth: Laurens, 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: Married on September 14, 1985, to Renee Kinsey Culbertson. Never divorced, three children.
6. Have you served in the military?
I have not served in the military.
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) The Citadel, 8/1977 – 5/1981, BA, History;
(b) USC School of Law, 8/1981 – 5/1984, JD.
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; SC Bar exam is the only bar exam I have ever taken; took it once.
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) USC School of Law:
Elected representative of Legislative Council (1983-84)
Job Placement Committee (1983-84)
Student Bar Association (1981-82; 1983-84)
Phi Delta Phi Legal Fraternity (1983-84)
Phi Delta Phi Social Committee (1983-84)
Karen Lee Scholarship Committee (1982);
(b) The Citadel:
Elected representative to Senior Class Board of Directors (1980-81)
Elected representative to Junior Class Board of Directors (1979-80).
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) 7 th Annual Civil Law Update	01/23/2009;
(b) 24 th Annual Criminal Law Update	01/23/2009;



- | | | |
|-----|--|-------------|
| (c) | General Jurisdiction (National Judicial College) | 04/19/2009; |
| (d) | Circuit Court Judge's Conference | 05/06/2009; |
| (e) | 2009 Annual Judicial Conference | 08/19/2009; |
| (f) | Civil Law Update | 01/22/2010; |
| (g) | Criminal Law Update – Part 2 | 01/22/2010; |
| (h) | 2010 Judicial Conference | 08/18/2010; |
| (i) | Criminal Law Section | 01/21/2011; |
| (j) | Trial & Appellate Advocacy Section | 01/21/2011; |
| (k) | SC Circuit Court Judges' Conference | 05/04/2011; |
| (l) | 2011 Annual Judicial Conference | 08/17/2011; |
| (m) | Part 2 Criminal Law Section | 01/20/2012; |
| (n) | Trial & Appellate Advocacy Section | 01/20/2012; |
| (o) | Annual Circuit Court Judges' Conference | 05/02/2012; |
| (p) | 2012 Annual Judicial Conference | 08/22/2012; |
| (q) | Trial & Appellate Advocacy Section | 01/25/2013; |
| (r) | Part 2: Criminal Law Section | 01/25/2013; |
| (s) | 2013 Annual Judicial Conference | 08/21/2013; |
| (t) | Criminal Law Section – Part 2 | 01/24/2014; |
| (u) | Trial & Appellate Advocacy Update | 01/24/2014; |
| (v) | 2014 Circuit Court Judges' Conference | 03/24/2014. |
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) At the Horry County Family Court seminar on 12/09/2005, I gave a lecture on "Writing Domestic Orders";
- (b) At the Tips From The Bench seminar on 02/15/2008, I gave a lecture on civil trials from a circuit judge's perspective.
12. List all published books and articles you have written and give citations and the dates of publication for each.
- None.
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.
- 11/15/1984 - admitted to practice in all state courts in SC.
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 1/14/1985 until 12/31/1990, I was an associate attorney and, then, a partner with the law firm of Schneider and O'Donnell, P.A. I maintained a general practice in all areas of law except tax law;
- (b) From 1/1985 until 4/1996, I served as Assistant Municipal Court Judge for the City of Georgetown, SC. I presided over criminal cases occurring in the city where the penalties for convictions were a fine of not more than \$500.00 and/or imprisonment of not more than 30 days. I also conducted preliminary hearings and set bond for

- defendants charged with General Sessions offenses, except for capital murder cases and charges with a penalty of life imprisonment;
- (c) From 1/1/1991 until 6/30/2007, I was a sole practicing attorney with the firm of Benjamin H. Culbertson, P.A. I maintained a general practice in all areas of law except bankruptcy, tax law and social security claims;
 - (d) From 4/1996 until 6/30/2007, I served as Master-In-Equity for Georgetown County, SC. I presided over non-jury civil cases that were referred to me and had the same jurisdiction and authority as a Circuit Court Judge presiding over the case;
 - (e) From 7/2001 until 6/30/2007, I served as Special Circuit Court Judge under appointment from The Honorable Jean Toal, Chief Justice of the SC Supreme Court. I had the same jurisdiction and authority as a Circuit Court Judge over matters pending in Georgetown County, except for presiding over trials in General Sessions Court;
 - (f) From 7/5/2007 to the present, I have been a circuit court judge, elected as resident circuit judge for the 15th judicial circuit, seat number 2.
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.? If you are currently a member of the judiciary, list your last available rating, if any.
I am currently a member of the judiciary. My last available rating was BV.
22. Have you ever held judicial office?
- (a) From 1/1985 until 4/1996, I served as Assistant Municipal Court Judge for the City of Georgetown, SC. I was appointed by Georgetown City Council and I presided over criminal cases occurring in the city where the penalties for convictions were a fine of not more than \$500.00 and/or imprisonment of not more than 30 days. I also conducted preliminary hearings and set bond for defendants charged with General Sessions offenses, except for capital murder cases and charges with a penalty of life imprisonment;
 - (b) From 4/1996 until 6/30/2007, I served as Master-In-Equity for Georgetown County, SC. I was appointed by the Governor of SC, with the advice and consent of the SC General Assembly. I presided over non-jury civil cases that were referred to me and had the same jurisdiction and authority as a Circuit Court Judge presiding over the case;
 - (c) From 7/2001 until 6/30/2007, I served as Special Circuit Court Judge under appointment from The Honorable Jean Toal, Chief Justice of the SC Supreme Court. I had the same jurisdiction and authority as a Circuit Court Judge over matters pending in Georgetown County, except for presiding over trials in General Sessions Court;
 - (d) From 7/5/2007 to the present, I have been a circuit court judge. I was elected by the SC General Assembly as resident circuit judge for the 15th judicial circuit, seat number 2.
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) State v. Anderson (SC Court of Appeals, Opinion No. 5196, filed 2/12/2014): In this case, the defendant/appellant appeals his conviction for first-degree burglary.

The State submitted an unknown fingerprint obtained from the crime scene to the Automated Fingerprint Identification System (AFIS) and requested 30 similar matches. AFIS produced 30 similar fingerprints logged into their records, one of which matched the defendant's fingerprint. Pursuant to *Brady v. Maryland*, the State only produced to the defendant the fingerprint received from AFIS that matched the defendant's fingerprint and the fingerprint received from the crime scene. The defendant argued that the State's failure to produce the 29 similar but unmatched fingerprints received from AFIS violated *Brady*.

As trial judge, I ruled that the State's failure to produce to the defendant the 29 similar but unmatched fingerprints received from AFIS was not a violation of *Brady*. This decision was affirmed by the S.C. Court of Appeals.

- (b) *State v. Hilton*, (SC Court of Appeals, Opinion No. 5178, filed 10/30/2013): In this case, the defendant is charged with felony driving under the influence involving death and driving under the influence involving great bodily injury. In a pretrial motion, I granted the defendant's motion to suppress the results of a breathalyzer test for violation of the implied consent law.

SC Code Ann. section 56-5-2950 was amended subsequent to the defendant's arrest to require all breath samples for breathalyzer testing be taken within two hours of the defendant's arrest. I ruled that the amended statute was to be applied retroactively and, thus, applicable to the defendant in this case. I further ruled that the State violated the implied consent statute by failing to provide the defendant with a written report showing the time of arrest, time of testing and test results. The S.C. Court of Appeals reversed my decision and remanded the case, finding that the amended statute was not to be applied retroactively and, thus, was not applicable to the defendant. However, the S.C. Court of Appeals did not address the State's failure to provide the defendant with a written report of his breathalyzer testing.

Petition for Writ of Certiorari is now pending before the SC Supreme Court.

- (c) *Berry, et al., v. SC Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management* (S.C. Supreme Court, Opinion No. 27237, filed 3/27/2013): This lawsuit arose out of the alleged failure of the plaintiff/appellant (*Berry*) to construct a bulkhead in compliance with a permit issued for such construction by the defendant/respondent (DHEC). *Berry* filed suit in circuit court seeking judicial review of an Enforcement Order issued by DHEC against *Berry* assessing a civil penalty against *Berry* and requiring *Berry* to restore the subject property to its previous condition. As the presiding judge, I dismissed *Berry's* lawsuit for lack of jurisdiction, finding that the Enforcement Order was administrative in nature and, thus, subject to the exclusive jurisdiction of the Administrative Law Court.

The SC Supreme Court affirmed my decision.

- (d) *Winkler v. State* (Court of Common Pleas, 15th Judicial Circuit, County of Horry, Case No. 2011-CP-26-3907): In this case, the plaintiff sought post-conviction relief from his conviction and death sentence for murder. As the presiding judge, I denied relief for the conviction of murder but, granted relief from the death sentence. The plaintiff's death sentence was set aside and a sentence of life without parole was imposed.

As the presiding judge, I ruled that the plaintiff was entitled to relief from his sentence due to ineffective assistance of counsel during the penalty phase of his capital murder trial. Plaintiff's trial counsel failed to object to the trial court's refusal to answer the jury's repeated question of what would happen to the plaintiff if the jury could not reach a unanimous decision on the sentence to be imposed (i.e., death or life without parole).

The appeal of this case is pending.

- (e) Horry Telephone Cooperative, Inc. v. City of Georgetown, et al. (S.C. Supreme Court, Opinion No. 27394, filed 6/4/2014): The issue in this case was whether the City of Georgetown's denial of multiple franchise applications by Horry Telephone Cooperative, Inc. to provide cable television was a violation of the SC Competitive Cable Services Act (the Act). At trial, the parties presented the novel question of whether the Act created a private cause of action. As presiding judge, I ruled that the Act did not create a private cause of action and denied the plaintiff's request for relief.

On appeal, the Supreme Court partially reversed and partially affirmed my ruling. The Supreme Court held that the Act did create a private cause of action but affirmed my denial of relief.

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

From 2004 to 2006, I was chairman of the Georgetown Election Commission. I was not elected to this position but was appointed by City Council. During this time, I don't recall filing any report with the State Ethics Commission but, I was never subject to any penalty.

I have not held any other public office other than a judicial office.

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.

(a) From 1/14/1985 until 12/31/1990, I was an associate attorney and, then, a partner with the law firm of Schneider and O'Donnell, P.A. I maintained a general practice in all areas of law except tax law;

(b) From 1/1/1991 until 6/30/2007, I was a sole practicing attorney with the firm of Benjamin H. Culbertson, P.A. I maintained a general practice in all areas of law except bankruptcy, tax law and social security claims.

26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office?

In 1998, I filed for Circuit Court Judge Resident Seat #2, 15th Judicial Circuit, which became vacant due to the retirement of Judge David Maring. I withdrew as a candidate when Judge Paula Thomas (who was an at-large judge) filed for the resident seat. When Judge Thomas was elected to the resident seat, I filed for her vacated at-large seat, as well as 2 other vacated at-large seats. Though I was found to be one of the three most qualified candidates in one of the at-large seat races, I withdrew voluntarily because Judge Buddy Nichols was the obvious candidate for election. On another occasion, I filed for an Administrative Law judgeship. Though I was found qualified by the JMSC, I was not one of the top three candidates.

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?

No.

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?

In 1993, I represented a husband in a divorce and custody case. After the case, both my client and I were sued by his ex-wife for alleged violation of the Omnibus Crime Bill. The ex-wife claimed that we had violated the statute by using wire-tapped phone conversations between her and her paramour during a motion hearing in the divorce trial. The trial court (in federal court) granted the ex-wife summary judgment but, on appeal to the US District Court of Appeals, the appellate court reversed the summary judgment and granted summary judgment in favor of me.

On another occasion, a case for supplementary proceedings was referred to me as Special Referee. After the supplementary proceedings, the defendant filed a pro se lawsuit against the circuit court judge who referred the case to the former Master-In-Equity, the former Master-In-Equity, the plaintiff's attorney and me. The complaint alleged some type of civil rights violation. The case was summarily dismissed.

Sometime around 2007 or 2008, a petition to approve a minor settlement was filed against me, though I was never served with the pleadings. My insurance carrier settled the claim of a minor who was injured while riding as a passenger in a vehicle driven by my son (who was a permissive driver covered under my insurance at the time). The court approved the settlement. I never knew the terms of settlement.

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?

Prior to being elected circuit court judge and while practicing law as an attorney, I carried malpractice insurance. Three years after my election as circuit court judge, I cancelled this insurance.

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 am not a member of any social media or Internet site. Members of my family are members of social media and I do appear in pictures displayed on their sites.

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?

I have not, directly or indirectly, requested the pledge of any member of the General Assembly as to my election nor have I 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 my election.

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?

I have not requested a friend or colleague to contact members of the General Assembly on my behalf and I am not aware of any friends or colleagues contacting members of the General Assembly on my behalf.

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) SC Circuit Court Judges Association (2007 to present);
- (b) SC Bar Association (1985 to present);
- (c) Georgetown County Bar Association (1985 to 2007);
President (2007); Secretary (1985-86, 1989-90);
- (d) American Bar Association (1985-92).

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) The Citadel Alumni Association;
- (b) The Citadel Brigadier Club;
- (c) Georgetown Cotillion Club;
President (2000-01);
Vice President (1999-2000);
Secretary/Treasurer (1998-99);
Executive Committee (1995-98);
- (d) Winyah Indigo Society;
- (e) Duncan Memorial United Methodist Church.

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. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

For the past 29 years, I have served as a member of the judiciary in some capacity. I gradually progressed from Assistant Municipal Court Judge, to Master-In-Equity, to Special Circuit Court Judge and, now Circuit Court Judge. I have now served as a Circuit Court Judge for the past seven years. I was first elected to the circuit court bench in 2007 and re-elected in 2009. I am a resident of Georgetown County and now hold the seat to which I am seeking re-election. Since the creation of this judicial seat, it has been held by a Georgetown resident.

52. References:

- (a) Austin Beard, Branch Manager
Anderson Brothers Bank
706 North Fraser St.
Georgetown, SC 29440
Telephone: (843) 546-3652
- (b) Ramona P. Moree
294 Cumbee Road
Andrews, SC 29510
Telephone: (843) 221-5815
- (c) Edward T. Kelley
E.F. Hucks & Associates, Inc.
2411 Oak Street, Suite 403
Myrtle Beach, SC 29577
Telephone: (843) 443-3159
- (d) Elaine P. Langston
126 Voyager's Drive
Pawleys, Island, SC 29585
Telephone: (843) 833-0210
- (e) Donna M. Price
511 S. Cedar Ave.
Andrews, SC 29510
Telephone: (843) 318-2929

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

Signature: Benjamin H. Culbertson

Date: August 1, 2014