

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

Circuit Court
(New Candidate)

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1. Why do you want to serve as a Circuit Court judge?
To make sure that every litigant and every lawyer is treated with fairness and respect.
2. Do you plan to serve your full term if elected? Yes
3. Do you have any plans to return to private practice one day?
If elected, I would not return to private practice.
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 two, instances in which I could imagine any *ex parte* communication: the first is a scheduling emergency in which a lawyer in a dire circumstance must alert the Court of an impediment to a scheduled appearance or some other emergency preventing a case from going forward. The second is in the case of an imminent threat of harm in which a lawyer seeks a Temporary Restraining Order under the Rules to prevent an irreversible loss.

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

Legislators who practice law are permitted to appear before all courts in the state. The purpose of Judicial Merit Selection is to put a buffer between legislators and judges before whom they might appear. I cannot foresee a situation in which a judge would be disqualified automatically from a case because one or more lawyers serve in the legislature. As to former associates or law partners, a judge should always announce the prior relationship and give the opposing party an opportunity to ask the case to be rescheduled before another judge. I often appeared before Bill Howard as a lawyer both in non-jury and jury cases, and Judge Howard always announced that we previously worked in the same firm and gave all opposing parties an opportunity to ask for the case to be carried over to another judge. He never automatically



disqualified himself—that is a decision counsel can make for his or her client on a case-by-case basis.

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?

I would always step aside in any case in which there appeared the slightest appearance of impartiality.

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

If my spouse or family member had a financial or social involvement with a litigant, I would always step aside.

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

There would be none, however slight.

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

If the misconduct involved anything related to the practice of law or the administration of justice, I would file a complaint. If the misconduct involved a social infraction unrelated to the practice of law or the administration of justice, I would have to decide on a case-by-case basis depending on the severity of the act. If the misconduct related to criminal conduct unrelated to the practice of law or the administration of justice, I would notify law enforcement authorities.

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

Yes. I am a member of the Charleston County Board of Zoning Appeals, and if elected, I could no longer serve in that capacity.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench? None.

13. If elected, how would you handle the drafting of orders?

I am not a good at delegating tasks. My goal would be to draft my own orders. If the volume of work prevented that, I would either follow Judge Ralph King Anderson's policy of dictating the Order to the court reporter, or directing counsel to draft an Order. I would not sign Orders drafted by counsel until opposing counsel had an opportunity to comment on the proposed order. For routine a motion to which there is consent or no opposition, I would use form orders.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

I would use a calendar system for deadlines and direct staff to make sure I conformed to self-imposed deadlines. I would set aside a specific period of time every week to review and sign all proposed orders.

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

I do not believe judicial activism exists. Our system is predicated upon the principle of *stare decisis*, statutes, rules, and logic. Judges, especially trial judges, rarely have an opportunity to set public policy because their decisions are controlled by precedent, the governing statutes and the rules of civil procedure. For example, when Judge Houck ordered the Citadel to admit women, some people thought that was “judicial activism,” when it was nothing more than applying longstanding judicial precedent to a discrete set of facts. It’s only when judges depart from established rules that they become potentially judicial “activists.” The best known example of this is *Plessey v. Ferguson* in which the Supreme Court had to torture the plain meaning of the XIV Amendment in order to compel segregation. When judges apply the law as it exists to discrete facts presented, it is almost impossible to be a judicial activist.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

The only activities I would undertake would be educational activities such as participating in Bench/Bar C.L.E.’s and assistance with law school training.

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

I cannot see how serving as a judge would strain any personal relationship.

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: Unless there were compelling reasons to the contrary (disability, infirmity, disease, etc.), I would take a dim view of repeat offenders. I would have to decide on a case-by-case basis, but absent a compelling reason for the defendant’s refusal to conform, I would be inclined to treat such a defendant severely.

b. Juveniles (that have been waived to the circuit court): I have no idea how to answer this question. Juveniles are much more vulnerable to circumstances which they cannot control than are adults. If I were convinced that a juvenile is vicious or a danger, I would have no difficulty treating that defendant severely. On the other hand, if the juvenile presented compelling circumstances as the circumstances in which he or she finds himself or herself, I would be willing to listen to such facts as having a potential to mitigate the sentence. Since solicitors’ offices are so overworked, it is unlikely a Solicitor would seek to waive a juvenile to circuit court absent compelling reasons.

c. White collar criminals: If I had a prejudice toward criminal defendants (and I do not think I do), this would be it. White collar criminals tend to have less explanation—their acts are coldly calculated—for their criminal conduct, and generally, they harm a greater number of people than any criminal defendant other than the most extreme violent criminals. If I were hearing a white collar criminal plea, one thing I would be interested in was the defendant's ability to make his victims whole. Often there is no opportunity to make the victim whole in a violent criminal case. White collar criminals often have the capacity to make restitution, and if I were a judge, I know I would be interested in making the victims whole.

d. Defendants with a socially and/or economically disadvantaged background: I would always be willing to consider a defendant's disadvantaged background as mitigation for his or her criminal conduct. While such disadvantages never an excuse for criminal conduct, such circumstances may play a role in fashioning a just sentence.

e. Elderly defendants or those with some infirmity: If a criminal defendant is elderly or infirm, the impulse to the criminal conduct may not necessarily be a criminal intent. While being elderly or infirm never excuses criminal conduct, it is a factor to be considered in formulating a just sentence.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
None
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
No. It creates the appearance of impropriety.
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?
Calm, deliberate, fair. A judge must be fair and appear fair.
24. 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?
Seven days a week, twenty-four hours a day.
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?
Judges have plenty of authority at their disposal without having to resort to anger. All anger does is create an appealable record.
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? Zero (other than gasoline)

27. If you are a sitting judge, have you used judicial letterhead or the services of your staff while campaigning for this office? Not applicable.
28. Have you sought or received the pledge of any legislator prior to this date? None
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening? None
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? None
31. Have you contacted any members of the Judicial Merit Selection Commission? None
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?
I am although I thought it was longer than 48 hours.

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

Thomas R Goldstein

Sworn to before me this 8 day of August, 2012.

Notary Public for S.C.

My Commission Expires: 10/30/16 _____