



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

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

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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?

Consistent with the letter and spirit of Canon 3, I do not engage in *ex parte* communications except when narrowly permitted and necessarily required by law. For example, as a trial judge for twelve years (and especially as an administrative judge), I was required to address procedural and scheduling matters, and I did so provided such communications did not touch upon the merits of the case. Beyond scheduling matters, the ethical rules do permit *ex parte* communications in limited situations. For example, a defendant in a capital case is entitled to pursue funding requests through an *ex parte* process; an application for a temporary restraining order pursuant to SCRCP 65 is initially handled in an *ex parte* fashion. There are, of course, other circumstances where *ex parte* communications are authorized.

For the past fourteen (14) years on the Court of Appeals and Supreme Court, *ex parte* communications have been a non-issue. Although appellate court rules

permit an appellate court judge to act in an ex parte manner (supersedeas, for example), I have had no occasion for an ex parte communication during my tenure as a judge on the appellate courts. I nevertheless remain sensitive to this issue, and the harm which results from improper ex parte communications, and my quarter of a century service in the South Carolina judiciary so reflects.

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 philosophy tracts the requirements of Canon 3 E of the Code of Judicial Conduct. I recuse myself if my impartiality might reasonably be questioned. Absent some unusual circumstance, I would not recuse myself merely because a lawyer-legislator is counsel of record. I am sensitive to this issue, especially in light of the media created impression that lawyer-legislators never lose before a state judge. As a trial judge and appellate judge, I have ruled against lawyer-legislators without fear of reprisal. Because of my many years of demonstrated judicial service, no one has sought my recusal based upon the presence of a lawyer-legislator's involvement in a case. Regarding former law partners and associates, for my first year on the bench, I declined to hear any matter in which my former law firm was involved. As with lawyer-legislators, no one has sought my recusal based on the presence of a member of my former firm.

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, absolutely. If a judge's impartiality might reasonably be questioned from an objective standpoint, recusal is mandatory.

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

I comply with applicable ethical rules. I do not receive gifts from attorneys. I attend state and local bar functions occasionally. Such functions are open to all members of the bar and all members of the judiciary. I rarely socialize with attorneys and never when the attorney has a matter pending in my court. I do attend the annual South Carolina Bar Convention and the South Carolina Bar pays for a hotel room and registration expenses, as it does all members of the Supreme Court.

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

A duty to report is triggered, according to the Code of Judicial Conduct, where the judge has “knowledge” that a fellow judge or lawyer has committed misconduct. If there is a “substantial likelihood” of misconduct, the judge is directed to take “appropriate action,” thus giving the judge discretion as to the appropriate action to take. If I were ever confronted with “knowledge” of misconduct, I would comply with the rules and report it. I dealt with lawyers on a daily basis as a trial judge. Unfortunately, as a trial judge, I was required to report lawyers to the Grievance Committee. Also unfortunately, as an appellate judge, I rarely have contact with lawyers.

9. Have you engaged in any fund-raising activities with any social, community, or religious organizations? Please describe

No, except I do make charitable donations to my church and other organizations.

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

The short answer is that I thoroughly study and review each matter presented to the court for resolution. This includes a careful review of the relevant portions of the record on appeal, consideration of all preserved issues / arguments contained in the briefs and extensive legal research.

There is a long answer to this question. Each chambers receives case records and case assignments approximately two months prior to the assigned term of court. I immediately study each case assigned to me. The first matter is to address any jurisdictional concerns. Following my initial review, I usually prepare a memorandum stating my preliminary assessment of the briefed issues, as well as my proposed disposition. I then assign each case to a law clerk who independently reviews the case. I then conference the case with the law clerk. We generally proceed from there with additional study and legal research. I then study each case assigned to the other members of the court. I prepare notes or a memorandum setting forth my assessment of these cases, including my proposed resolution. I then assign a law clerk to independently review the cases assigned to other judges on the panel. Appellate “judging” is, to a degree, a team effort. Good faith collaboration with other judges is essential, as each member of the court should strive to reach the correct result under the law. This collaboration, however, presents no obstacle to disagreeing with the position of a fellow judge.

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

I am opposed to “judicial activism” as that term is commonly understood. It is improper in my firm judgment for a judge to ignore clear and unambiguous statutory or constitutional provisions and elevate gut-level feelings of right and wrong to legal status. Courts should follow and enforce the law, not create it. Answering this question from the standpoint of the common law is not as straightforward. The common law is generally judge-made law. By design, when the Legislature has not addressed a matter that is otherwise part of the common law, the courts are necessarily involved in determining the common law. This limited role should, in my judgment, be narrowly and cautiously invoked, as judges must honor the will of the Legislature except when a constitutional issue is at stake. Judges adjudicate and the legislators legislate, and I know the difference. Judges cross the line when they are unable to control their proclivities to legislate. I view the role of the judiciary as a limited one, requiring restraint and humility. The core principle for a judge should be to honor the rule of law. Federalist Paper No. 78 sets forth the proper and limited role of the judiciary.

12. 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?

My entire judicial career speaks to an earnest desire to improve the legal system and increase public awareness of the value of our legal system and the rule of law. In 2015 I was the first recipient of the Chief Justice’s lifetime achievement award for contributions to the legal profession.

I will continue to actively participate in CLEs, JCLEs and other law-related forums. I have spoken to students of various ages, from middle school through college and law school. I have spoken many times across the state to community organizations, such as Rotary Club, Kiwanis and Civitan. Beyond my extensive involvement with formal continuing legal education, I served as co-chair of the Chief Justice’s Task Force on Trial Court Operations. I have served on the Chief Justice’s Commission on the Profession for approximately fourteen (14) years, the last nine (9) as Chairman.

13. 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?

There is a substantial difference between the trial bench and appellate bench in terms of pressure on “relationships.” (For trial judges, I refer the JMISC to my responses when I was a trial judge.) As an appellate court judge, the pressure is reduced. I am very committed to my family and friends, and service on the Supreme Court does not hinder these relationships.

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

As noted above, I serve on the Chief Justice's Commission on the Profession. I am the Chairman of the Commission, having served as Chairman since 2008. I serve as a national commissioner for CALEA (www.calea.org), which sets standards for public service agencies and evaluates law enforcement agencies for national accreditation. I serve as a board member for Upstate Warrior Solutions, which serves returning veterans in reacclimating to society. I serve on the Advisory Board of the Nelson Mullins Riley Scarborough Center on Professionalism. I serve on the Bar's Wellness Committee, essentially in an ex-officio capacity as a result of my position of Chair of the Commission on the Profession.

15. 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?

In answering this question, I note that resort to extrinsic sources (other than case law precedent) is unnecessary where the constitutional provision is clear and unambiguous. Thus, the drafters' intent can often be gleaned from the text itself. Where an ambiguity exists, an analysis must be cautiously undertaken to accurately determine and effectuate the intent of the drafters. An ambiguity should not be a license to "legislate" from the bench. I am opposed to judges ignoring proper legal analysis and elevating personal feelings of right and wrong to constitutional status.

Honest judicial analysis requires an objective search to determine the drafters' true intent; this includes, among other things, resort to the disputed language and reconciling the challenged provision with related constitutional provisions which may be clear. There is, and must continue to be, an internal consistency and coherency within the South Carolina Constitution. If an ambiguity exists, thus permitting resort to external documents and collateral sources, the inquiry must be cautiously undertaken. I refer the JMSC to an article I wrote years ago on the subject of judicial activism, a copy of which I have attached as an addendum to the Personal Data Questionnaire.

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

I incorporate the above response. "Historical evidence," such as contemporaneously produced documents, often provides substantial assistance in determining the drafters' intent when confronted with an ambiguity. Such evidence should be carefully evaluated and, depending on all factors, may be entitled to significant weight.

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

While courts extend deference to an agency's interpretation of regulations under which the agency operates, there is no similar deference to an agency's interpretation of the Constitution. An agency's interpretation of the Constitution would be of little, if any value. Constitutional interpretation is a judicial function. A principle of law holds that a question of law is for the courts to decide.

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

Yes, contemporaneous documents may be entitled to substantial weight in determining the drafters' intent, provided of course there is an ambiguity in the text permitting resort to extrinsic documents. By analogy, some statutes in the Code of Laws contain "Official Comments" and "South Carolina Reporter's Comments." In determining legislative history and intent, such documents and resources may provide significant assistance. Concerning interpretation of a constitutional provision, similar "contemporaneously produced" documents may shed substantial light on the drafters' intent. This information could be entitled to significant weight in interpreting ambiguities in the text of the Constitution. But I reiterate – if the constitutional or statutory text is unambiguous under the "plain meaning" rule, resort to extrinsic sources is unnecessary.

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

I do receive dividend income but that does not impact my judicial service. Recusal might be warranted if a company in which I own stock is involved in the litigation. I make disclosure where warranted and comply with the Code of Judicial Conduct.

17. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

No.

18. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

Yes, and I have exceeded the minimum requirements.

19. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

An appropriate judicial demeanor is vital to the administration of justice and public confidence in the judicial system. Canon 3B contains an excellent description of the proper demeanor for a judge – for example, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others... .” A judge needs to remember that every case is important. To a litigant or witness, that one court appearance may be his or her only exposure to the judicial system. It is imperative that a judge maintain proper decorum in court while being kind, patient and courteous to all present in the court. This obligation, of course, continues outside of court. Perhaps Socrates said it best, “A judge shall hear courteously; answer wisely; consider soberly; and decide impartially.”

20. Is there a role for sternness or anger with attorneys?

Sternness, yes. Anger, no. Anger is never a proper judicial response. A good judge, I believe, can maintain decorum and control without anger.

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

Sworn to before me this ____ day of _____, 2017.

(Signature)

(Print name)

Notary Public for S.C.

My Commission Expires: _____