



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?
Recently, a non-lawyer acquaintance remarked about the job of a judge that it "pays pretty good and requires no heavy lifting." However, upon reflection, I realized that upholding the law and the ends of justice can sometimes be burdensome. My father was an attorney and I was exposed to the legal profession at an early age. I decided as a boy that I wanted to be an attorney. My brother and his son are also attorneys. Like my father, I am a "country lawyer." At one time or another, I have handled cases in Municipal Court, Magistrate's Court, County Court, Probate Court, Family Court, Common Pleas Court, General Sessions Court, South Carolina Court of Appeals, South Carolina Supreme Court, United States District Court, and United States Bankruptcy Court. I have appeared before judges of all sorts – most good, some exceptional, some poor and a few bad. Somewhere along the way, I decided that I would like to be a judge someday. Over the years, I have often found myself presiding over groups and meetings, and chairing committees. I have served as chairman and vice-chairman of the Florence County Planning Commission, chairman of the Administrative Council and Pastor/Staff Parish Relations Committee at my church, president of the Johnsonville/Hemingway Lions Club, president of the Williamsburg County Bar Association, and president of my high school class. I enjoy the challenge and responsibility of being in charge. Growing up, I was expected to do what is right and to be fair, honest, and considerate of others regardless of their station in life. I have represented a widely diverse group of clients in over 40 years of practicing law – African-American, Caucasian, Hispanic, male, female, multi-millionaire, indigent, individual, and large corporation. I can relate to them all. I believe my experience as an attorney would be a great asset to me as a judge. I want the job and I am ready to take on a new challenge. I would very much like to finish my legal career on the bench.

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? No

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes. I am 64 years of age. I was born in South Carolina and have resided in South Carolina all my life. I have practiced law for over 40 years.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
Ex parte communications should not be initiated, permitted, or considered by a judge – except in cases specifically permitted by the Code of Judicial Conduct. Exceptions include ex parte communications for scheduling, administrative purposes and emergencies that do not involve substantive issues in the proceeding, provided neither party will gain an advantage as a result and other parties are promptly notified of the substance of the communication and given the opportunity to respond. The rule extends beyond the parties and their attorneys to persons not participating in the proceeding. It is permissible and may be desirable for a judge to consult with a disinterested expert on the law or legal issues pertaining to a case, with disclosure to all parties and opportunity for them to respond. Communications with court personnel pertaining to the functioning of the court or administrative duties are not prohibited. The issuance of a temporary restraining order ex parte is allowed in limited circumstances and is also governed by The Rules of Civil Procedure. Notice must be given to the adverse party unless it clearly appears from facts shown by affidavit or verified complaint that immediate or irreparable injury, loss or damage will result before notice can be given and a hearing held. The TRO must set out the reasons for issuance and be limited in time. A hearing should be held as soon as possible, and the party against whom the order is issued may apply for modification or dissolution of the order. Appropriate security is required of a party obtaining a TRO. There are a few other permitted exceptions. The prohibition on ex parte communication extends to law clerks and other personnel on the judge’s staff.

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

A judge must perform the duties of judicial office impartially. Matters in which a lawyer-legislator, former associate or former law partner are to appear do not automatically require recusal. A judge must disqualify himself/herself in a proceeding where the judge's impartiality might reasonably be questioned, including instances where the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed facts concerning the proceeding and where the judge or a former law partner or associate served as a lawyer concerning the matter. Also included are situations where the judge, his parents, spouse or children may have an economic interest, where the judge, the judge's spouse or family member within the third degree of relationship to either of them as a party, an officer, director or trustee of a party, an attorney or has more than a de minimis interest in the proceeding. If the appearance of the lawyer – legislator, former associates or former law partner falls within any of these situations, the judge should disqualify himself/herself. The judge should disclose any special interest or relationship that might cause the judge's impartiality to be reasonably questioned. After disclosure on the record of the basis for the judge's disqualification, it may sometimes be appropriate to submit the issue to the parties and their attorneys outside the judge's presence, and allow them to request or waive disqualification of the judge in accordance with the applicable rules.

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?

A judge must avoid even the appearance of impropriety and must promote public confidence in the integrity and impartiality of the judiciary. The fact that I felt it was necessary to disclose the matter suggests that my impartiality might be reasonably questioned. I would likely grant such a motion for recusal. I believe a close call should be resolved in favor of recusal.

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

I would be compelled to disqualify myself if my spouse, parent, child or other family member residing in my household had an economic interest

in the subject matter in controversy or more than a de minimis

interest that would be substantially affected by the proceeding. Even if the interest of the spouse or family member were insignificant, recusal may still be appropriate. A judge must be careful to avoid the appearance of impropriety and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

I would set standards for myself consistent with the Code of Judicial Conduct. A judge shall not accept, and shall urge members of the judge's household not to accept gifts or favors from anyone except as allowed in the applicable rules. Ordinary social hospitality is generally acceptable. Gifts must not be intended or reasonably perceived to influence the judge in the performance of judicial duties. Gifts from relatives or friends for special occasions are permissible if the gifts are fairly commensurate with the occasion and the relationship. A gift to a judge or a member of the judge's household that is excessive in value raises questions about the judge's impartiality and integrity, and might require disqualification where it would not otherwise be required.

10. 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 judge who receives information indicating a substantial likelihood that another judge or an attorney has committed a violation of the code of judiciary conduct must take "appropriate action." What action is appropriate would reasonably be dictated by the nature and degree of the misconduct. A judge is required under the Code of Judicial Conduct to inform the appropriate professional authority of another judge or lawyer known by the judge to have committed a violation of the Code that raises a substantial question as to the judge's fitness for office or as to the lawyer's honesty, trustworthiness or fitness. The Rules of Professional Conduct require reporting by a lawyer of similar misconduct of a judge or lawyer. The term "substantial" refers to the seriousness of the possible offense. The rules do not require that every minor infraction be reported. Some measure of judgment is required. A minor, isolated incident, without any pattern or repetitive misconduct, may possibly be appropriately dealt with by confronting the offender personally. The comments to the Rules of Professional Conduct state that the reporting obligation is said to be limited to those offenses that a self-regulated profession must vigorously endeavor to prevent.

11. 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? No. If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.
12. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? Please describe.
Not during the past few years. I have before participated in fund raising activities for the Johnsonville-Hemingway Lions Club, Indiantown Lodge No. 165, and Hemingway First United Methodist Church.
13. Do you have any business activities that you would envision remaining involved with if elected to the bench?
I am a partner in a family owned partnership (Hemingway Warehouse) which owns a rental beach house which is managed by a realty company and a tract of undeveloped land in Florence County. I am sole member of a limited liability company (LA LA Land Ventures, LLC) which was engaged in the purchase, sale, lease and management of real property. I envision remaining involved with these and foresee no conflict.
14. If elected, how would you handle the drafting of orders?
Many orders are somewhat routine and require no extensive time for preparation. In my experience this type order has often been prepared by one or more of the attorneys, usually the prevailing side. This procedure seems to work for simple orders most of the time. The judge is always ultimately responsible for the preparation and content of the order. In more complex cases, I would prepare the order myself. In cases with difficult factual issues heard without a jury or with unusual legal issues, it may be appropriate for the attorneys to submit briefs for guidance in preparation of the order. If a request is made for an attorney to submit a draft of a proposed order, the request should be communicated to all other parties. The proposed order must be submitted to counsel for all parties for their review and response when it is submitted to the judge. Of course, any proposed order would be carefully reviewed, and modified or replaced as deemed proper.
15. If elected, what methods would you use to ensure that you and your

staff meet deadlines?

A calendar and a "tickler" system can insure that deadlines are met. More than one person should be responsible for regularly monitoring of the list of dates and deadlines. This would be in addition to any system utilized or recommended by Court Administration.

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

The judiciary should not usurp the constitutional role of the legislature. The laws of South Carolina are properly enacted by elected members of the General Assembly. It is the role of judges to apply the law and occasionally to interpret the law while endeavoring to ascertain the legislative intent and stay within constitutional limitations. There have been cases where appellate courts have taken it upon themselves to revise the law in a positive way or make new law by resolving novel issues that come before them. Generally, my philosophy is that courts do not sit as a "super legislature" with power to override the will of elected representatives at their whim.

17. 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?

I would be willing to participate in continuing legal education programs; to serve on panels created to review or prepare changes to the law or rules governing the practice of law and conduct of the judiciary; to lecture or speak to groups concerning the law, the legal system and the administration of justice; and, after gaining some experience on the bench, to seek and promote ways to improve the legal system and the administration of justice.

18. 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?

My wife is a retired teacher who taught in the public school system for 33 years, and both of my sons are family physicians. The three of them are well acquainted with the pressures of being in the public eye under close scrutiny and being accountable. Most importantly, they all have strong convictions about doing what is right despite any adverse consequences. Other members of my family and my friends who know

of my desires to become a judge have been and would be supportive. Family members and friends already know that being an attorney can be very stressful, and often matters that weigh on the mind are confidential and can't be discussed. I foresee no problems in this area.

19. 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.

I believe that appropriate sentencing for any criminal defendant depends on the facts and circumstances of each case. The criminal laws often provide for quite a disparity in the penalty for the same offense. The determination as to a proper sentence in any given case must come through the wisdom, common sense and sound discretion of the judge.

My philosophy on sentencing is generally justice tempered with mercy in appropriate cases.

a. Repeat offenders:

Repeat offenders should generally be given harsher sentences than first time offenders. Indeed, many statutes provide for graduated penalties for subsequent offenses. For repeated commission of serious violent crimes, the legislature has enacted laws providing for mandatory stiff penalties up to life imprisonment. Typically, most first offenders are not dealt with harshly, and are given the opportunity to get back on the right path. If an offender has rejected the opportunity to reform and has continued to prey on others, society must be protected. It makes sense to me that a person who has committed two armed robberies, for example, should not be afforded the opportunity to commit a third.

b. Juveniles (that have been waived to the Circuit Court): Juveniles that have been waived to the circuit court to be tried as adults present a difficult situation. Most of us have to admit to foolish actions when we were young and immature. Yet, some people in their early and mid-teens have committed heartless acts of brutal violence that simply cannot be mitigated by their youth. Justice may demand a stiff sentence in such a case. Again, it comes down to case by case determination. I believe that consideration should be given to the rehabilitation of a young offender. Everyone will be better served if a young offender can be diverted from a life of crime or from becoming a lifelong inmate in prison. A harsh prison sentence to a young offender can force him to associate with unsavory criminals, and somewhat ironically, may influence him to become a "better" criminal.

c. White collar criminals:

White collar crime, though not without victims, is usually without violence. Victims typically have lost money but no blood. I see a distinction between someone who embezzles or misappropriates funds at his/her place of employment compared to someone who commits a robbery with the victim at gunpoint. There is also a difference between someone who, in effect, makes himself an unauthorized loan that he ends up being unable to repay, and someone who employs an elaborate scheme with intentions of stealing from the outset. Consideration should be given to whether the white collar criminal has the opportunity and ability to continue to earn income in order to provide restitution for the victims and to support himself/herself rather than be housed and fed at the expense of the state. If an offender is imprisoned, any chance of restitution to the victim(s) may be lost, possibly forever. A determination must be made as to whether proper restrictions and supervision can be implemented to adequately punish the perpetrator, to guard against subsequent offenses and to afford victims a chance to recover part, if not all, of their loss. Other factors would have to be considered, including the past history of the offender and his willingness to make restitution to victims. Common sense and sound discretion must be applied in each case.

d. Defendants with a socially and/or economically disadvantaged background:

Defendants with a socially and/or economically disadvantaged background may find themselves at a disadvantage in the criminal justice system as well. They often (except for repeat offenders) don't understand legal principles and how the legal system operates. They usually can't afford the most experienced and reputable attorneys. While it is not the judge's role to act as attorney or advocate for such a person, care must be taken to insure that such a person is treated fairly and with due respect. A more thorough explanation of the person's legal rights may be required and steps taken to insure that any waiver of rights is knowingly and voluntarily made. The system must afford "justice for all." Without question, we don't all come from the same backgrounds, we don't have the same opportunities, we don't have the same parenting and guidance, we aren't exposed to the same risks and temptations, etc. In short, life is not always fair! It is easier for some to find themselves off the right path because of circumstances beyond their control such as having had no encouragement or discipline from parents or being constantly exposed to negative peer pressure and temptation. However, people from "good families" and advantaged lifestyles can also end up on the wrong side of the law. At some point, we must assume responsibility for ourselves and be held accountable for

our actions. No one is entitled to a pass by reason of a disadvantaged background. Of course, the circumstances of the offense must be examined. Consideration must be given to the opportunity for rehabilitation. Justice, tempered with mercy in appropriate cases, should be the guiding principle.

e. Elderly defendants or those with some infirmity:
Elderly defendants and those with some infirmity pose additional problems. These defendants often have physical and medical needs that can be extremely costly to the state when they are incarcerated. The nature and circumstances of the offense must be considered along with the likelihood of additional offenses. If such a defendant were no material threat to society, I would explore an arrangement whereby the offender could be out of prison with appropriate restrictions and supervision. While this type of defendant is not entitled to a pass for criminal conduct, special consideration may be appropriate, applying the common sense and sound discretion of the judge.

20. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No
21. 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 any such interest to the parties and their counsel if known to me. A judge must disqualify himself if he or a family member has any more than a de minimis interest that could be affected by the outcome of the proceeding. However, by definition, "'de minimis' denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality." Absent some additional reason not to, I would hear the case.
22. Do you belong to any organizations that discriminate based on race, religion, or gender? No
23. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?
Yes. Since I am over sixty years of age and I have practiced law for over thirty years, I am exempt from CLE requirements.

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

A judge must require order and decorum in proceedings before the judge, but must be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the performance of judicial duties. A judge should be firm but should also be open-minded, fair, deliberate, tactful, considerate, compassionate, understanding and humble. A judge must refrain from speech, gestures or conduct that would be reasonably interpreted as sexual harassment, and any conduct that would impair the fairness of a proceeding. A judge should encourage and seek to facilitate settlement, but without applying undue pressure or making parties or attorneys feel coerced. A judge must demonstrate due regard of the rights of those appearing before him/her to have issues fairly and timely resolved. A judge must not comment in a proceeding pending or impending in any court, or make any comment that might reasonably be expected to affect the outcome. A judge should neither compliment nor criticize jurors for their verdict, but may express appreciation for their service. A judge must be mindful of his conduct and demeanor even when off the bench so as not to demean the judicial office or create questions as to the integrity of the judge or his/her ability to fulfill the duties of the office. A judge should be wary of a condition sometimes referred to by lawyers as "black robe-itis."

The rules governing demeanor of a judge certainly do not apply only while on the bench or in chambers. A judge must avoid impropriety and the appearance of impropriety, and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Improper or irresponsible conduct can erode public confidence, and create the impression that the judge's ability to carry out judicial duties with integrity and competence would be impaired. I don't believe that a judge needs to be serious and somber at all times, but generally speaking, the rules governing demeanor of a judge would apply at all times. A judge must be willing to accept restrictions on the judge's conduct that might be viewed as overly burdensome by the ordinary citizen.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant?

No.

Is anger ever appropriate in dealing with attorneys or pro se litigants?

No. While members of the public, criminal defendants, attorneys or pro se litigants may say or do things to invoke the displeasure of the judge, the judge's response should never rise to the level of anger. A judge must remain patient, dignified, tactful and cool under fire. A judge

should use extreme care when dealing with persons who are rude, disrespectful, antagonistic or even contemptuous, careful not to allow such a person to unduly influence a decision or ruling, or otherwise impair good judgment. I have witnessed judges wisely taking a recess upon becoming aggravated to cool off and reflect on the situation before proceeding.

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 21st day of July, 2017.

(Signature)

(Print Name)
Notary Public for South Carolina
My Commission Expires: _____