

# Judicial Merit Selection Commission

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Erin B. Crawford, Chief Counsel  
Emma Dean, Counsel

Post Office Box 142  
Columbia, South Carolina 29202  
(803) 212-6623

## MEMORANDUM OF GUIDANCE

TO: Members of the General Assembly and Judicial Candidates

FROM: Members of the Judicial Merit Selection Commission

RE: Guidance Concerning Communications between Candidates and Members

DATE: December 28, 2017

The Judicial Merit Selection Commission (the Commission) has received questions concerning whether candidates may voluntarily interview with legislative groups to discuss their qualifications prior to the formal release of the Commission's report to the General Assembly. (The end of this period is 12:00 noon, Tuesday, January 16, 2018). While there is no express prohibition against extending such invitations and conducting these interviews, members of the General Assembly and candidates must be aware of the restrictions on such meetings. By this memorandum of guidance, the Commission seeks to remind members of the General Assembly and judicial candidates of the applicable statutes and Judicial Canons. The statutes and canons provide general parameters of what is and is not permissible and for that reason must be and are broad in their scope. In deciding whether a certain activity is permitted, the specific facts and circumstances of any given situation would need to be scrutinized on a case by case basis to determine whether the activity is permissible in light of the statute and canons.

Judicial candidates are bound by S.C. Code Ann § 2-19-70(C), JMSC Rule 24, and Code of Judicial Conduct, Rule 501, SCACR, Section 5A(3)(d) in participating in interviews or meetings and answering questions posed to them. The Commission reminds members of the General Assembly that they are also bound by Section 2-19-70(C)(see below) and may not offer a pledge of support before the formal release of the screening report:

(C) No candidate for judicial office may seek directly or indirectly the pledge of a member of the General Assembly's vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the judicial office until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No member of the General Assembly may offer his pledge until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty-eight hours after the nominees have been initially released to members of the General Assembly. For purposes of this section, indirectly seeking a pledge means the candidate, or someone acting on behalf of and at the request of the candidate, requesting a person to contact a member of the General Assembly on behalf of the candidate before nominations for that office are formally made by the commission. **The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate's qualifications.**

The first paragraph of JMSC Rule 24 provides:

**Rule 24:** No candidate for judicial office may seek directly or indirectly the pledge of a member of the General Assembly's vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the judicial office until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No member of the General Assembly may offer his pledge until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than forty-eight hours after the nominees have been initially released to members of the General Assembly. For purposes of this section, indirectly seeking a pledge means the candidate, or someone acting on behalf of and at the request of the candidate, requesting a person to contact a member of the General Assembly on behalf of the candidate before nominations for that office are formally made by the commission. **The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate's qualifications.** If a candidate knows of any solicitations for pledges on his behalf, the candidate has an affirmative duty to inform the commission of the activity. The commission must include in its screening report to the General Assembly any evidence and findings of fact regarding the solicitation of pledges attempted in violation of state law or screening commission rules.

Throughout the process (even after the issuance of the final report), judicial candidates are bound by the restrictions of the Code of Judicial Conduct Section 5A(3)(d), which provides that they:

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

See also Section 3B(9), the general rule on public comment by judges.

While the burden of complying with the Judicial Canons falls upon each judicial candidate the members of the General Assembly must also understand that a judicial candidate is ethically required to adhere to the Judicial Canons and may be limited in how he or she can respond to certain questions.

The Commission again reminds members of the General Assembly and candidates that **a potential violation of the statutes or Canons must be considered by the Commission when determining a candidate's fitness for judicial office.** Any violation of the Judicial Canons by a candidate, regardless of the success of their candidacy, is also subject to possible discipline. (Lawyers are subject to Rule 8.2(b) of the Rules of Professional Conduct as contained in Rule 407, SCACR).