



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

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

Full Name: James E. Lockemy

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1. Do you plan to serve your full term if re-elected?
Yes, until I retire.

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?
Ex parte communications should not occur. If they do, intentional or accidental, and the communication concerns the case at hand, either directly or indirectly, then recusal and notice to all parties of the communication is the most appropriate remedy.
An exception is during the trial of certain cases like those involving the death penalty. Sometimes the appointed defense attorney needs funds for experts and investigations that the prosecution is not entitled to know. The defense attorney can request *ex parte* the approval of funds from indigent accounts to pay for these needs. That is the only *ex parte* communication that I can imagine that is appropriate.

5. 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 consider the request seriously. The appearance of bias is as important to justice as bias itself. Therefore, if there was such an appearance or one could be reasonably be perceived, I would grant the motion.

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

I do not accept private gifts from individuals. Certain bar events including the South Carolina Bar Association Annual Meeting, The Defense Lawyers Annual Meeting and the Association of Justice Annual Meeting, I have attended and accepted lodging and food. Those I consider Bar events without indicating favor or bias toward any particular person, litigant or group.

7. 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?

I am obligated to report the misconduct or other improper activities that indicate a lawyer or judge is in violation of the Code of Lawyer or Judicial Misconduct as well as the Judicial Canons. I would make the proper report.

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

NO

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

I thoroughly read and review all the records of the case below. In addition, I read the filed briefs of all parties. In many cases, I may do some additional research myself. I then discuss the case and debate the case with my law clerks. If the case is one for oral argument, I prepare questions to address the lawyers arguing the case. If not, I prepare questions, if any, for submitted cases to discuss with my panel colleagues. After considering the interaction and comments from the lawyers during oral argument, my discussion with my panel colleagues and comments from my law clerks, I make my decision. If I am the assigned judge, I prepare the opinion and circulate for approval from my colleagues. If I am not the assigned judge, I either read the prepared opinion of my colleague to make sure it complies with our discussion. If I am in disagreement with the majority opinion, I prepare and issue a dissent or concurring opinion, depending on the particulars of the case.

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

Judges apply the law as adopted and passed by the Legislature. If you mean by “judicial activism” do I feel that in all cases, I have the right to make law, then I am in no way and have never been a judicial activist.

If the legislative statute is clear then it controls and I follow it. If it is not clear then I do my best to interpret the intent of the legislature. Obviously, that interpretation becomes law, if I am in the majority at the Court of Appeals, unless reversed or changed by the Supreme Court, only to the extent it clarifies a statute.

In addition, I am bound by prior decisions of the Supreme Court and follow those. In some cases, judges are called upon to interpret prior Supreme Court and Court of Appeals cases. In such cases, these decisions become new common law.

As far as public policy is concerned, that is set by the General Assembly in its statutes.

11. 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?

Since I entered the judiciary, I have been involved with activities of this nature. I have been extremely involved in South Carolina Bar activities and committees. I now serve on the Law Related Education Committee of the South Carolina Bar. On this committee, I assist in Mock Trials throughout the state and the middle school and high school level.

I am also very involved in the American Bar Association. I have served on several committees of the ABA. I have also been the Chair of the Appellate Judges Conference and now Chair the Appellate Judges Education Institute. I have written several articles in the *Judges Journal*, a publication of the Judicial Division of the ABA and have served as Co-Chair of its Editorial Board. I was the author of a chapter in a book published by the ABA, entitled *The Improvement of the Administration of Justice*. I was asked to author a chapter on the future of appellate courts and appellate practice.

While assigned to Kosovo with the United States Army in 2003-2004, I decided to unite the judges and lawyers on both sides of the warring factions in that country. Together we formed the Kosovo Jurist Association. The goal of our organization was to promote peace and conflict resolution through the Rule of Law instead of violence. We had several meetings and public appearances, including Kosovo as well as

presentations with NATO allies. Unfortunately, after my assignment ended and I returned to the United States, the organization faltered. Soon afterward, increased violence broke out. Today, Kosovo is a sovereign nation after breaking off from Serbia but conflicts and tensions still remain. I still feel the key to peace and an ease to tensions is through the members of the legal profession, both Muslims and Christians members, to implement and properly promote the Rue of Law.

12. 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?

Being a judge poses strains on all of your relationships. The confidentiality that a judge must maintain causes strains, the inability to engage with friends who wish to talk politics or the events of the community, that might come before you, causes some to think you are anti-social. Having to leave dinner groups when the conversation is too involved with politics or matters that are in, or soon maybe in, the courts causes family members, close friends and others you love, discomfort.

I try and explain my obligations and keep a good humor about it without offending people. But, keeping my impartiality and appearance of impartiality, is paramount.

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

As I mentioned, I have served on several ABA and SC Bar Committees. In addition, I am serving as an Executive Board member of the South Carolina National Guard Association, Commander of the Dillon County Veterans of the Year Committee, and the Dillon County Theater Board.

I am also a member of the Board of the Alston Wilkes Society

14. 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?
- a. The use and value of historical evidence in practical application of the Constitution:
 - b. The use and value of an agency's interpretation of the Constitution:
 - c. The use and value of documents produced contemporaneously to the Constitution, such as the minutes of the convention:

All of these issues and factors are considered but our state Supreme Court is the sole interpreter of our Constitution. Our Supreme Court has suggested the “constitutional interpretation...is a responsibility of the (c)ourt as (the) ultimate interpreter of the Constitution. See S. C. Pub. Interest Found. V. Judicial Merit Selection Comm’n 369 S.C. 139, 142, 632 S.E.2d 277, 278 (2006) (Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution” (quoting Baker v. Carr, 369 U.S. 186, 211 (1962)).

Once again all of the factors mentioned above from historical evidence to documents produced at meetings and conventions. In addition, an agency must follow the Constitution and make sure due process applies in their proceedings. Agencies are given some deference in regard to statutes that govern that agency but the Constitution is vastly more important than a statute and is the ultimate voice of the people and the ultimate law that governs the entire establishment of government. See Ward v. State, 343 S.C. 14, 538 S.E. 2d 245 (2000) standing for the proposition that administrative law judges cannot rule on the constitutionality of a regulation or a statute since that would be a violation of the separation of powers doctrine. Whether it be our state Constitution or the United States Constitution, the judicial branch has the duty to interpret the Constitution in disputes on its meaning.

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

NO

16. 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

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

YES

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

A judge should always maintain dignity as well as fairness to all. The judge should never treat lawyers, litigants, court personnel or others rudely or in a fashion that indicates the judges feels superior to others. A judge bears an honored burden on his/her shoulders. On one shoulder the honor of being a judge with all of its power and respect. On the other shoulder is the responsibility on applying the law fairly with justice paramount and the duty to treat others with respect. Both must be demonstrated by the judge in and out of the Court Room.

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

Anger should never be exhibited by a judge. If an attorney is so disruptive, rude or disrespectful that the judge is approaching anger. If possible, a recess should be taken to let every one cool down. There are times though that a judge due to the responsibilities of the judiciary or the appearance of fairness in the court room must call down a litigant or attorney. The judge must maintain control of the court room so that everyone has a fair opportunity for case presentation and consideration of their case.

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 _____, 2020.

(Signature)

(Print name)

Notary Public for S.C.

My Commission Expires: _____