



**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?

I have represented clients for 37 years as an attorney. These years have served me well, as I believe I possess the background, knowledge, understanding, experience, and compassion to serve ably as a judge. It is my intent to handle this role in a manner that litigants and attorneys have a right to expect from their jurists.

Being a judge is something that I have always hoped would be the final phase of my legal career. I am not running for the judicial retirement because, unless something changes, it does not appear that I can ever qualify for judicial retirement. Most importantly, serving as a judge is a way I can give back to not only my profession but also to the people of this State.

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.

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 are not generally permissible. Canon 3B(7)(A) of the Code of Judicial Conduct (hereinafter “Canon \_\_\_”) provides that there are very limited circumstances in which a judge may engage in *ex parte* communications. Examples listed include, but are not limited to, when it is necessary to facilitate scheduling, other administrative purposes and to accommodate emergencies. The comments to the Canon also note certain situations authorized by law, such as the issuance of a temporary restraining order under certain limited circumstances (Rule 65(b), SCRCPI), in which an *ex parte* communication is permitted.

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?

Canon 3E addresses when judges should disqualify themselves. I would rely on this Canon to guide me in assessing the motion. I would err on the side of caution, as I have for 37 years, which in this instance means, more likely than not, I would recuse myself as I believe that all parties have the right to feel they had an impartial judge. At the same time, if I felt it was simply gamesmanship, I would not recuse myself.

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

Canon 2B provides: “A judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment...” It is hard to envision such a scenario. My wife works for the House of Representatives. I do not currently have any close relatives in this State. Still, if there is any chance for someone to say it appears improper, I would not become involved.

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

Except in limited circumstances, gifts are inappropriate. See Canon 4D(5)(a) – (i). There are circumstances where social hospitality is not only appropriate, but expected. For example, the Richland County Bar Association annually provides an opportunity for the Judiciary to meet and socialize with the lawyers in this area. I would zealously apply the standard explained in the Canon.

9. 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?

The answer, like so much of the advice we give as lawyers, is that it depends. Canon 3D provides guidance, but it does not provide a concrete answer except in very limited circumstances, i.e. personal knowledge. Assuming I have no personal knowledge, how well do I know the lawyer or judge? What was the conduct? Do I have a contact in the lawyer's law firm that I could possibly speak with regarding the situation? The conduct itself makes a great difference. I am very mindful of the impact of decisions such as these. I would like to think that I would bring to bear on the issues, the many skills in problem solving and judgment I have learned during my years of practice.

10. 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.

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

On one occasion, three or four years ago, my wife and I, along with a few other members, were asked by our minister to speak to the congregation during stewardship season regarding what role pledging played in our lives.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

No.

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

My preference would be to draft my own orders. After all, they would be just that: my order. Sometimes, the situation dictates otherwise. In this situation, if the end result is clear to me, I may give direction to counsel for the prevailing party to draft the order and what it should and should not contain. At the same time, I would ensure that opposing counsel is given the opportunity to comment or make suggested changes. Sometimes it may be appropriate to have both parties submit competing orders. In the end analysis, the order is "owned" by the judge and, thus, it should be his or her thoughts on the issue.

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

Deadlines are part of a litigation practice. Currently, I have deadlines placed on my calendar, which my assistant has access to, and two different lists that are updated weekly with impending deadlines. If the deadline is pressing, then the file does not leave my desk. Finally, for virtually my entire legal career, I have worked most Saturdays and an occasional Sunday. Deadlines are just that: a deadline that must be met.

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

I do not believe in judicial activism. The law is the law and the litigants and lawyers are entitled to rely upon it as written, not how it should be written. The Judiciary may comment on the perceived inadequacies of the law in an opinion to alert the Legislature to the issue, but it is ultimately the responsibility of the Legislative and Executive branches not the Judiciary, to create law.

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?

If I am elected, I would be focused on meeting the needs of counsel and parties and serving as a trial judge. If there is better way of doing something, I would hope that I would see it and advocate for it or implement it if it is within the scope of my authority. I would listen to the Clerks of Court. I would be willing to speak at CLEs or other programs designed to promote the law in the community.

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?

No. I am at a great stage in life. I have been married to a very supportive wife for 37 years. She not only understands the pressures of being a lawyer because she is one, but also the rigors of being married to a lawyer that has a litigation practice. My son is 30 and he is a West Point graduate who is actively serving this Country. He too understands what it means to be the child of a lawyer that has a litigation practice. While we speak often, because of his position as an infantry officer, he understands better than most that a life of service has an impact on the lives of loved ones.

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:

- b. Juveniles (that have been waived to the Circuit Court):
- c. White collar criminals:
- d. Defendants with a socially and/or economically disadvantaged background:
- e. Elderly defendants or those with some infirmity:

I believe the answer is the same to all of these classes of offenses: it depends on the individualized facts and circumstances of each case.

Factors I might consider with respect to a repeat offender include: the prior offense(s); how long ago did the offense(s) occur; were they the same or similar to this offense; what was the current offense; and what latitude does the South Carolina Code give with respect to multiple offenses.

With respect to juveniles, the fact they have been waived to Circuit Court would seem to necessarily indicate that the offense was serious. What is the age of the individual? What is the offense? Murder and rape are, of course, more serious than robbery. Most important is there any chance that the defendant's life can be rehabilitated and the defendant can become a productive member of society.

White collar criminals are criminals. The offense may not be the equivalent of a murder, but potentially their conduct could impact far more many lives. As with youthful offenders, is there any chance that the defendant's life can be rehabilitated and the defendant become a productive member of society. At the same time, what is the message being sent by the court if it imposes a slap on the wrist just because there was no physical harm involved?

As far as defendants with a socially and/or economically disadvantaged background, I think I would fail as a judge if I did not at least recognize and understand we do not all have the same opportunities and same circumstances in life. At the same time, a socially and/or economically disadvantaged background should not be an excuse for committing a crime.

How did being elderly or infirm impact the defendant's decision making? What sentence sends the message that a wrong was committed, but does not ignore the circumstances leading to the illegal conduct.

Ultimately, how I would rule in any given situation will depend entirely on the applicable law and the circumstances presented to me. I am not predisposed to any particular path and would expect my 37 years of being a

lawyer and 65 years of life (if nominated and elected, I will be 65 at the time of election) to guide me.

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

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

While permitted by Canon 3E(1)(d)(iii), I would not.

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

Even though I meet the 60 years of age/30 years of practice standard for being relieved of the CLE obligation, as a certified specialist I must obtain 15 hours of CLE per year. I met that obligation for the 2019-2020 reporting period.

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

Canon 3B(4) requires that a judge “be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...” A judge is always a judge 24 hours a day regardless of setting. I plan to be engaging with counsel and respectful with the parties. One of the great things about having practiced as long as I have is that I learned that judges should be human too. I recently argued a motion before a judge I had not seen since I tried a case against her more than 20 years ago. She opened the hearing by saying, “Mr. Shuler, it is good to see you. It has been a while.” That, in my opinion, was an excellent display of the proper demeanor. Indeed, the court was welcoming of all participants including the pro se parties in other matters being heard that day.

23. 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?

The answer is no. As indicated above, Canon 3B(4) requires that a judge “be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...” There is no gray in the Canon. If I felt myself becoming angry, I would attempt to control it since anger is never an appropriate response when acting as a

judge.

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

\_\_\_\_\_  
Franklin G. Shuler, Jr.

Sworn to before me this 20thday of July, 2020.

\_\_\_\_\_  
(Signature)

Margaret H. Smith

\_\_\_\_\_  
(Print Name)

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_