



**JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE
2020**

Court, Position, and Seat # for which you are applying: Circuit Court, At Large, Seat 12

1. Name: Mr. Franklin G. Shuler, Jr.

Name that you are known by if different from above
(Example: A Nickname): Frank

Are you currently serving in some capacity as a judge? If part-time, please note.
(Includes Municipal, Magistrate, Etc.) No.

Home Address: [REDACTED]

Business Address: Turner Padgett Graham & Laney, P.O. Box 1473, Columbia SC 29202

E-Mail Address: [REDACTED]

Telephone Number: (home): [REDACTED]
(office): 803-227-4242
(cell): [REDACTED]

2. Date of Birth: [REDACTED] 1955
Place of Birth: Atlanta, Georgia
Social Security Number: [REDACTED]

3. Are you a citizen of South Carolina? yes
Have you been a resident of this state for at least the immediate past five years? yes

4. SCDL# or SCHD#: [REDACTED]
Voter Registration Number: [REDACTED]

5. Have you served in the military? If so, give the dates, branch of service, highest rank attained, serial number (if applicable), present status, and the character of your discharge or release. Please provide a copy of your DD214 concerning your discharge.

Response: 3/22/77 – 9/29/80 (active duty); 9/30/80 – 10/23/86 (Individual Ready Reserve)
United States Marine Corps; Captain; Honorable. See attached Appendix A.

6. Family Status:

(a) State whether you are single, married, widowed, divorced, or separated.

(b) If married, state the date of your marriage and your spouse's full name and occupation.

- (c) If widowed, list the name(s) of spouse(s). N/A
- (d) If you have ever been divorced or are in the process of obtaining a divorce, state the date, name of the moving party, court, and grounds. N/A
- (e) State the names of your children and their ages. If your children are old enough to work, include the occupation of each child.

Family Status: Married on May 21, 1983 to Jane Opitz Shuler (S.C. House of Representatives, Chief Legal Counsel - Legislative Ethics Committee)

Never divorced, one child.



7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Georgia Institute of Technology (9/73 – 3/77), B.S. Industrial Management;
 - (b) Cumberland School of Law, Samford University (8/80 – 12/82), J.D., my first two months of law school were on terminal leave from the Marines; hence the overlap in the dates);
 - (c) University of South Carolina (5/82-7/82) (attended summer school while working full time at Nelson Mullins so I could graduate early from Cumberland).

8. List the significant activities in which you took part during your attendance at law school. Give the years you were involved in these activities and list any leadership positions you held.
 - (a) South Carolina student club 8/80 – 12/82;
 - (b) Honor Court (8/81-7/82);
 - (c) Worked 25 + hours (40 hours as a summer clerk at Nelson Mullins) per week from January 1981 until graduation.

9. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. Please indicate the number of times you took the exam in each state.
 - (a) Alabama – 1983 (one time);
 - (b) Florida – 1984 (one time);
 - (c) South Carolina – 1986 (one time).

10. Describe chronologically, since graduation from law school, your legal experience. Please include a list of all positions held in which you worked in a legal capacity. Describe the general character of your practice and divide it into periods with dates if its character changed over the years. Please also describe the extent to which you were involved with the administrative and financial management of each of these entities, including management of trust accounts.

Justices/judges applying for re-election to their current position may omit Questions 11–17. If you are a full-time judge seeking a judgeship different than your current position, Questions 11-17 should be answered based on your experience prior to serving on the bench.

- (a) Brown, Hudgens, Richardson, Whitfield & Gillion – Mobile, Alabama
Associate in a 20-person defense litigation firm. Duties included all aspects of a civil litigation practice including trial and appellate work in state and federal court. Practice included insurance contract interpretation, property/arson litigation, and automobile accidents. (January 1983 to June 1984).
- (b) Cooper, Mitch, Crawford, Kuykendall & Whatley – Birmingham, Alabama
Associate and then Partner in 13-person labor and employment law firm that primarily represented employees and unions. Involved in all aspects of a litigation practice including handling matters: in state and federal court; bankruptcy court; before the NLRB; and in arbitration. Primary practice areas: NLRA, LMRA, LMRDA, ADEA, FLSA, ERISA and Title VII. (June 1984 to December 1991).
- (c) Quimm, Arndt, Patterson & McIntosh – Columbia, South Carolina
Associate in small general litigation firm. Primarily worked on matters I brought with me including two class action ERISA retiree benefits cases in which I represented the retiree class. Other litigation of note included defending large class action environmental case and obtaining defense verdict (second chair) in a case involving alleged negligent reference check. (January 2, 1992 to May 14, 1993).
- (d) Turner, Padget, Graham & Laney, P.A. – Columbia, South Carolina
Associate then Shareholder in the Columbia office of approximately 80 lawyer firm. General employment law counseling to a wide range of employers. Litigation and counseling practice representing employers in state and federal courts in employment related matters and actions based on state law claims of retaliatory discharge, breach of a handbook and breach of a covenant not to compete. I was hired to develop an employment practice. During the period I was developing the practice, I handled foreclosures, collections, bankruptcies and other cases arising from the debtor/creditor relationship. Handled a number of insurance (life/disability/accidental death & dismemberment) cases. Served as outside counsel for an institution of higher education and a charter school. Have mediated close to 600 cases. Member, Management Committee, 1998–2001; Team Leader, 1996-2003; employment counsel the majority of the time for the firm, which was from May 17, 1993 to present. I have the authority to sign on all accounts, including trust accounts; however, the firm’s CFO actually handles the management of the accounts.

11. Please answer the following:

- (a) If you are a candidate for Family Court, please provide a brief written description of your experience within each of the following Family Court practice areas: divorce and equitable division of property, child custody, adoption, abuse and neglect, and juvenile justice. Include information about cases you have handled in each of these

practice areas, or if you have not practiced in an area, describe how your background and procedural knowledge has prepared you to preside over such matters as a Family Court judge. Please also indicate the frequency of your appearances before a Family Court judge within the past five years.

- (b) If you are a candidate for Circuit Court, please provide a brief written description of your experience in criminal matters, including any cases handled over the past five years, and include a brief description of the issues involved. Further, please provide a brief written description of your experience in civil matters, including any cases handled over the past five years, and include a brief description of the types of matters handled, issues involved, and procedural history. Please include information such as the primary areas in civil court in which you practice, and whether you represent plaintiffs or defendants, or both. You may go back further than five years if you feel it would assist the Commission with its assessment of your experience. If you lack experience in an area, describe how your background and procedural knowledge has prepared you to preside over such matters as a Circuit Court judge, or how you would compensate for your lack of experience in this area. Please also indicate the frequency of your appearances before a Circuit Court judge within the past five years.

I have handled two criminal cases in my career: (1) an assault & battery claim arising out of a workplace incident that was tried before a jury in Allendale Summary Court on August 13, 1997, which resulted in a defense verdict; (2) a criminal contempt proceeding in Tennessee state trial court in the early 1990s. The issue arose from the alleged violation of an injunction arising from picketing. I cannot tell you the parties or court 30 years later. I do remember I got a defense verdict. My only other “criminal” experience arises in the context of civil matters, Post-Conviction Relief (PCR). I have handled at least five court-appointed PCRs, all of which “tried,” and at least one of which we took depositions and sought certiorari with the South Carolina Supreme Court. See Kinard v. Battle, No. 5:14-4391-BHH, 2016 U.S. Dist. LEXIS 35494 (D.S.C. Jan. 28, 2016), report and recommendation adopted, 2016 U.S. Dist. LEXIS 33617 (Mar. 16, 2016), appeal dismissed by, certificate of appealability denied, 2016 U.S. App. LEXIS 20615 (4th Cir. S.C., Nov. 17, 2016) (discussing the underlying issues in the PCR case in the context of a habeas corpus proceeding). All required me to learn criminal law to effectively represent my client.

As should be clear from any review of my PDQ, I am a labor and employment lawyer by trade since 1984; however, civil litigation has always been at the center of my practice over the years although the form has changed over time. As a central part of my litigation practice, I have written innumerable briefs. Although I attended USC Law School for only one summer semester, I had the good fortune to have Professor Thomas Haggard for a writing credit. I learned more in that course that has helped me during my career than any other course I took in law school. I pride myself in my ability to research and write.

My first associate position was with an insurance defense firm in Mobile, Alabama. During the year with the firm, I was able to second chair three federal court jury trials. I also tried my first solo jury trial, as well several bench trials in disputes under \$5000.

While practicing with Cooper, Mitch in Alabama from June 1984 through December 1991, I represented plaintiffs, unions, and employees. This particular position presented a unique opportunity because the firm split after I accepted the job, but before I started. I was thrust into a federal court trial practice with only one year of experience. The first case I ever tried in South Carolina – before I ever moved here – was a four-day jury trial in federal court where I was lead counsel for the defendant union. See Smith v. Local 7898, United Steelworkers of America, 834 F.2d 93 (4th Cir. 1987). I tried 30+ arbitrations along with several jury and non-jury trials in Alabama, Tennessee, South Carolina, and Virginia during this period, not to mention trying untold cases before the NLRB and handling more injunction hearings than I care to remember. Because of the economic downturn in the 1980s, I even tried two employment-related cases in Bankruptcy Court, one in Tennessee and the other in Texas. I argued cases in the Alabama Supreme Court, and briefed or argued cases in the Fourth, Sixth and Eleventh Circuit Courts of Appeal during this period.

Since moving to my present firm in 1993, my practice has primarily included the representation of defendants/employers. Most employment cases result in either summary judgment or settlement. This, and the fact that most cases today are subject to mandatory mediation, has limited my opportunities to try cases recently.

I have handled every kind of employment case imaginable although my present practiced consists of approximately 50% ERISA cases, which are non-jury and are resolved by way of cross-briefs if not settled. Additionally, over the years I have routinely practiced in other areas of the law (unfair trade practices, bankruptcy, commercial litigation, debt collection and foreclosure, arson, director and officer liability, public entities).

- (c) If you are a candidate for Master-In-Equity, please provide a brief written description of your experience in the Master's court, including any cases handled over the past five years, and include a brief description of the issues involved. Please include the frequency of your appearances before a Master-In-Equity or a Circuit Court judge within the past five years.
 - (d) If you are a candidate for Administrative Law Court, please provide a brief written description of your experience before an Administrative Law Judge, including any issues discussed and the frequency of your appearances before the Administrative Law or Circuit Court within the past five years.
12. What was the frequency of your court appearances during the past five years or in the five years prior to your election to the bench?

- (a) federal: I have very few actual court appearances in the last five years. I have filed answers in more than 240 cases in the last five years, all of which were resolved by settlement (most) or motion. I can think of only three actual appearance in court for a hearing, one of which was for jury selection. That case settled on the courthouse steps. The last case I tried was in December 2014. Over the course of my career I have had more than 10 but less than 20 federal court jury trials.
- (b) state: I have not tried any cases in State Court within the last five years. Most of my appearances during this period have been related to motion hearings, of which there have probably been more than 10 but not 20. Quite frankly, the last time I tried a state court jury trial was in 2004. I have tried non-jury matters but mostly these were in family court for TPR See SCDSS v. Sarah W., 402 S.C. 324, 721 S.E.2d 739 (2013), cert. denied, 571 U.S. __ (October 7, 2013)) or PCR in Circuit Court. As with my federal court employment practice, most cases settled.

13. What percentage of your practice involved civil, criminal, domestic, and other matters during the past five years or in the five years prior to your election to the bench?

- (a) civil: 85%
- (b) criminal: 0%
- (c) domestic: 0%
- (d) other: Mediation 15%

14. What percentage of your practice in trial court during the past five years or in the five years prior to your election to the bench involved matters that went to a jury, including those that settled prior to trial?

- (a) jury: 25%
- (b) non-jury: 75%

During the past five years, did you most often serve as sole counsel, chief counsel, or co-counsel?

Lead counsel in all cases except when we were associated by out of state counsel.

15. List five of the most significant litigated matters you have personally handled in either trial or appellate court, or before a state or federal agency. Give citations if the cases were reported and describe why these matters were significant.

- (a) SCDSS v. Sarah W., 402 S.C. 324, 721 S.E.2d 739 (2013), cert. denied, 571 U.S. __ (October 7, 2013). This was a court-appointed termination of parental rights case. I argued whether section 63-7-2570(8) of the South Carolina Code is unconstitutional when it is the only basis for the termination of parental rights. I lost 3-2 at the South Carolina Supreme Court. I felt that my client should not lose her parental rights solely based on the passage of time and, therefore, unsuccessfully sought certiorari at the United States Supreme Court.
- (b) Armistead v. Vernitron Corp., 944 F.2d 1287 (6th Cir. 1991) I was able the obtain lifetime insurance benefits for a class of retirees. The case has been cited 350 times. Issues included the application of equitable estoppel in the context of a collective bargaining agreement (union contract) and ERISA benefit plan, admission of extrinsic evidence, reformation, and the standard for awarding attorney's fees in an

ERISA cases. The case was mentioned by the Supreme Court in M&G Polymers, USA, LLC v. Tackett, 574 U.S. 427 (2015).

- (c) MacPherson v. University of Montevallo, 922 F.2d 766 (11th Cir. 1991). This addressed the issue of disparate impact in ADEA cases, which at the time was a novel theory. Ultimately, the issue was resolved in Smith v. City of Jackson, 544 U.S. 228 (2005), which noted the MacPherson decision in both the majority and concurring opinions. Also, this case addressed the concept of market forces as an explanation for wage discrepancy.
 - (d) Carbis v. Transbulk System, et al., not reported (2004, tried in Richland County Circuit Court). I was able to obtain defense verdict in less than 30 minutes after a four-day trial. Claims pled against my clients were civil conspiracy, breach of fiduciary duty, misappropriation of trade secrets, breach of contract accompanied by fraudulent act, and tortious interference with contract.
 - (e) Case name unknown. Case was tried in November 1988. It was tried in the Eastern District of Virginia a/k/a the Rocket Docket. It taught me about trial prep, organization for trial, and the use of exhibits. The methods I learned over 30 years ago I still use today although with the advent of courtroom technology some of it no longer applies. I obtained a directed verdict for my client. I remember the time and place of the case if not the name because while I was trying the case my wife learned she was pregnant.
16. List up to five civil appeals you have personally handled. Give the case name, the court, the date of decision, and the citation if the case was reported.
- (a) SCDSS v. Sarah W., 402 S.C. 324, 721 S.E.2d 739 (2013), cert. denied, 571 U.S. ___ (October 7, 2013);
 - (b) Armistead v. Vernitron Corp., 944 F.2d 1287 (6th Cir. 1991) (I tried the case and assisted on briefs in the Circuit Court);
 - (c) Smith v. Local 7898, United Steelworkers of America, 834 F.2d 93 (4th Cir. 1987) (I tried the case and assisted on briefs in the Circuit Court);
 - (d) Heaitley v. Brittingham, Dial & Jeffcoat, 320 S.C. 466, 465 S.E.2d 763 (Ct. App. 1996), cert. dismissed as improvidently granted, 328 S.C. 23, 494 S.E.2d 429 (1997);
 - (e) Lewis v. Trustmark Ins. Co., 1999 U.S. App. Lexis 15746 (4th Cir. July 12, 1999).
17. List up to five criminal appeals you have personally handled. Give the case name, the court, the date of decision and the citation if the case was reported.
- (a) NONE.
 - (b)
 - (c)
 - (d)
 - (e)
18. Have you ever held judicial office? If so, list the periods of your service, the courts involved, and whether you were elected or appointed. Describe the jurisdiction of each of the courts and note any limitations on the jurisdiction of each court.
- No. I have been selected as an arbitrator for the parties between five and ten times. The most recent time was earlier this year.

19. If the answer to question 18 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also, list citations to any appellate review of these orders or opinions.
- (a) Not applicable.
 - (b)
 - (c)
 - (d)
 - (e)
20. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- (a) State of Alabama – April 29, 1983;
 - (b) State of Florida – May 24, 1984;
 - (c) State of South Carolina – September 15, 1986;
 - (d) United States District Court for District of South Carolina – 1992;
 - (e) United States Court of Appeals for Fourth Circuit – 1986;
 - (f) United States Supreme Court – 2013;
 - (g) I have been also admitted to the Southern, Middle and Northern Districts of Alabama, and the Sixth and Eleventh Circuits but I have let my memberships lapse because I no longer routinely practice in these jurisdictions.
21. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture.
- Response: I have made numerous presentations on employment, ethics and mediation related topics on the local, state and national basis. This is not a complete list, as I stopped keeping track of all the seminars and programs I taught. It does not include the occasions I spoke to business classes at USC about harassment and non-discrimination.
- (a) Stress, Mental Disorder and Other Invisible Disabilities: What You Don't See Can Hurt You, February 10, 1998, Council On Education in Management ("COEM");
 - (b) Employee Handbooks March 6, 1998, National Business Institute;
 - (c) Employers Alert! Negotiating the Hidden Hazards of Employee in the Contingent Workforce, August 19, 1998, COEM;
 - (d) State and Federal Employment Laws, November 11, 1998, SC Primary Care Association;
 - (e) From Mental Disabilities to Managed Diseases – Measuring The Impact of Invisible Disabilities in the Workplace, December 1, 1998, COEM;
 - (f) 1999 Mid-Year SC Bar Meeting, Employment & Labor Law Section, Program Moderator;
 - (g) Avoiding the Emergence of Common Exempt/Non-Exempt Classification Mistakes that Will Leave You Exposed to Back Pay and Overtime Liability, February 2, 1999, COEM;
 - (h) How to Manage the Cross-Over of FMLA, ADA and Workers' Comp to Maintain a Productive, Non-Litigious Work Force April 8, 1999, COEM;

- (i) Effective Use of Alternative Dispute Resolution in Resolving Discrimination, May 5, 1999, SC Chamber of Commerce;
- (j) SC Labor and Employment Law, Title VII – Sex Discrimination, June 25, 1999, SC Bar;
- (k) Mastering the Big Three Overlap: Effectively Managing ADA, Workers' Comp and FMLA, August 30, 1999, COEM;
- (l) Program Moderator, 15th Annual NC/SC Labor & Employment Law Seminar October 1999, SC Bar;
- (m) Program Chair and Moderator, Defense Research Institute's (DRI) 24th Annual Employment Law Seminar May 5, 2000;
- (n) Emerging Trends in the FLSA After Alden v. Maine, May 5, 2000, DRI;
- (o) Avoid the Most Common and Surprising Legal Pitfalls in Your Reference Checking Practice, June 14, 2000, COEM;
- (p) Employment Laws: A Primer for Municipal Attorneys, December 1, 2000, Municipal Association of SC;
- (q) Exempt or Non-Exempt: Why Is the FLSA So Confusing and Legally Devastating if Your Classification is Wrong, September 17, 2001, COEM;
- (r) Ethics of Mediation, Arbitration & Negotiation, Employment Law Section of the SC Bar November 30, 2001, SC Bar;
- (s) The Very Basics of Labor and Employment Law, October 21, 2002, South Carolina Workers' Compensation Educational Association;
- (t) The Very Basics of Employment Policies, October 25, 2002, S.C. Library Association/Southeastern Library Association Conference;
- (u) Emerging Trends Under the Fair Labor s Standards Act, April 29, 2004, Defense Research Institute – Chicago, IL (1 hour);
- (w) Employment Laws: A Primer for Municipal Attorneys, December 2, 2005, Municipal Association of SC;
- (x) Employment Law Update – What is New That Affects You, April 19, 2007, Columbia Society for Human Resources Management (1 hour);
- (y) The Nuts, Bolts, Screws and Washers of Employment Law, November 3, 2007, 23rd Annual NC/SC Labor & Employment Law Seminar;
- (z) ERISA Remedies and Mediation February 25, 2008, Litigating ERISA Claims, NBI (1 hour);
- (aa) The Nuts, Bolts, Screws and Washers of Employment Law Redux, May 21, 2008, Recent Developments in Employment and Labor Law, SC Bar (1 hour);
- (bb) The Employment Law Generalist – Navigating a Panoply of Laws, April 30, 2009, DRI Employment Law Seminar, DRI (45 minutes);
- (cc) Employment Law Update: Part 1: A Review of Significant Case Law from U.S. Supreme Court and U.S. Court of Appeals (2010-2011), ExecuSummit, Sept. 20, 2011;
- (dd) Harassment and Discrimination 101, USC business law class invited lecturer (3 times);
- (ee) Winning at Mediation, July 24, 2015, SCDTAA;
- (ff) A Pirate's Parlay: What is New in Employment Law in 2017, moderator, 48th Annual SE RIMS Conference (September 21, 2017);
- (gg) Mediation, Settlement Agreements and Separation Agreements, July 27, 2018, Employment Law Essentials Program, SC Bar;
- (hh) Mediation, Settlement Agreements and Separation Agreements, August 16, 2019,

Employment Law Essentials Program, SC Bar.

22. Provide, as a separate attachment, your continuing legal or judicial education report from the past five years.
Response: See attached Appendix B.
23. List all published books and articles you have written and give citations and the dates of publication for each.
- (a) Book Review: Effective Legal Negotiations and Settlement by Charles B. Craver, 9 Am. J. Trial Advocacy 497 (1986);
 - (b) Employment Discrimination and Other Employment-Related Claims after Burke: When Are Amounts Received Taxable? 9 The Labor Lawyer 189 (1993);
 - (c) Burke Revisited: Taxation of Employment Related Damages, 4 South Carolina Lawyer 23 (March/April 1993);
 - (d) The Family and Medical Leave Act of 1993: The First Two Years, 7 The South Carolina Policy Forum 34 (1996);
 - (e) Model Employee Policies for South Carolina Employers (S.C. Chamber of Commerce 1996) (eight editions before becoming an online publication);
 - (f) Contributing Author, Labor and Employment Law for South Carolina Lawyers (S.C. Bar 2007) (all five editions);
 - (g) Contributing Author, Jury Instructions for Employment Defense Litigators (DRI 2007);
 - (h) Privacy Interests in Employment After Quon, For The Defense 61 (June 2011) (co-authored with Michelle Clayton).
24. Please furnish as a separate attachment, two examples of legal articles, briefs, orders, or other legal writings for which you can claim sole or primary authorship. If you cannot claim sole authorship, please explain the extent to which you are the primary author, to include a description of the other authors and their contributions. The writing samples are for the Commission's use only and will not be published. (If you are a judge and are not seeking a different type of judgeship, this question is inapplicable.)
See attached Appendix C.

I have attached the Petition for Writ of Certiorari in SCDSS v. Sarah W., 402 S.C. 324, 721 S.E.2d 739 (2013), cert. denied, 571 U.S. ___ (October 7, 2013). I tried the case and wrote the briefs in the Court of Appeals and Supreme Court. I wrote this Petition; however, I requested Sam Sammataro add a second set of eyes to my draft, particularly in focusing on the issue presented and, of course, the arguments I made.

The second writing is a draft order I prepared based on a fact pattern provided by the U. S. Magistrate Judge Screening Committee in 2014. I performed all of the research and writing.

25. What is your rating or membership status, if any, by any legal rating organization; such as, Best Lawyers, Chambers, Legal 500, Martindale-Hubbell, Who's Who Legal, Super Lawyers, Million Dollar Advocates Forum, etc.? If you are currently a member of the judiciary, list your last available rating, if any.

- (a) 2014 Distinguished Lawyer Award, South Carolina Bar, Employment and Labor Law Section;
 - (b) South Carolina Supreme Court, Certified Specialist, Employment and Labor Law, 1992-present;
 - (c) South Carolina Supreme Court, Certified Mediator, 1999-present;
 - (d) Martindale-Hubbell® Peer Review Rating™-AV®;
 - (e) South Carolina Super Lawyers, Employment Law, 2008-2020;
 - (f) Best Lawyers in America, Alternative Dispute Resolution, 2008-2016;
 - (g) Best Lawyers in America, Mediation, 2017-2020;
 - (h) Best Lawyers in America, Litigation: Labor and Employment, 2017-2020;
 - (i) Best Lawyers in America, Litigation: ERISA, 2017- 2020;
 - (j) Best Lawyers in America, Employee Benefits (ERISA) Law, 2014-2020;
 - (k) Best Lawyers in America, 2005-2020;
 - (l) Best Lawyers' 2020 Columbia, SC Employee Benefits (ERISA) Law "Lawyer of the Year";
 - (m) Best Lawyers' 2019 Columbia, SC Mediation "Lawyer of the Year";
 - (n) Best Lawyers' 2018 Columbia, SC Employment Law - Management "Lawyer of the Year";
 - (o) Best Lawyers' 2017 Columbia, SC Litigation - Labor and Employment "Lawyer of the Year";
 - (p) Best Lawyers' 2016 Columbia, SC Litigation - ERISA "Lawyer of the Year";
 - (q) Best Lawyers' 2015 Columbia, SC Employee Benefits (ERISA) Law "Lawyer of the Year";
 - (r) Chambers USA: America's Leading Lawyers for Business, Employment Law, 2007, 2012-2019.
26. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) Alabama State Bar (Member, 1983 – present); Labor and Employment Law Section (Member, 1984-1992; Board Member, 1991);
 - (b) Florida Bar (Member, 1984 – present);
 - (c) South Carolina Bar (Member, 1986 – present); Labor and Employment Law Section (Member, 1993-present; Officer, 1998-2006; Chair 2003); Employment and Labor Specialization Advisory Board (Member, 1999; Chair, 2000–2002; Member, 2009; Chair 2010 to 2014); Alternative Dispute Resolution Section (Member);
 - (e) DRI (formerly known as Defense Research Institute) (Member, 1997- present); Labor and Employment Law Committee (Program Chairperson, 2000; Co-Editor, The Job Description, 2001–2002; Committee Vice-Chair, 2002-2004; Committee Chair, 2004-2006);
 - (f) Richland County Bar Association (Member);
 - (g) South Carolina Defense Trial Attorneys Association (Member).
27. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission

during the period you held public office. If not, were you ever subject to a penalty? If so, give details, including dates.

No.

28. For sitting or former judges, list all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor.

Not applicable.

29. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.

Yes. I have been a candidate for a United States Magistrate Judge for the District of South Carolina (2008, 2010, 2014, 2019). I have been selected for the interview (usually limited to 10) on three occasions but not selected.

30. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office? If so, give details, including a description of your occupation, business, or profession, the dates of your employment, and the name of your business or employer.

Over the course of my life I have held numerous jobs and that is part of the reason I became an employment lawyer. In my early teens I cut yards on James Island. My first job for an employer was at age 15 and that of an internal courier at Doctor's Hospital in Tucker, Georgia. I subsequently worked in the kitchen cleaning dishes and delivering meals. I later was employed at McDonald's for a week before I quit because it was so boring. I was employed as a garbageman (riding the back of the truck) for Dekalb County, Georgia during the summer of 1972 and later was a garbage truck driver (at age 17) during the summer of 1973. During Christmas break while in college, I worked at JC Penney in the tire department, outdoors/garden, sporting goods and later I worked with the United States Post Office. I worked parking cars during my junior and senior years at Georgia Tech. During the summers, I worked for Sealtest/Breyer's milk/ice cream. I was initially a milk sniffer. The following summer, I ran the machine that loaded creamer into the small cups you receive at restaurants. The third summer I loaded ice cream trucks from 30 degrees below freezers. The two-month period after graduating from Georgia Tech but before starting the Marines, I did odd jobs, such as painting, working as a temporary employee, and loading vans for a moving company.

I was an officer in the United States Marine Corps. My highest rank was Captain. Billets included: Student Naval Aviator (24 Months); Infantry Officer (9 months); law clerk (temporary active duty while in law school); and Naval Justice School (Reservist course, graduated with Honors). I have landed a jet on a carrier but did not actually receive my wings, hence the SNA designation. I became a Platoon Commander and, thereafter, for a short period Company Executive Officer. I served four tours on active duty while an Individual Ready Reservist (IRR), the most important of which was to attend Naval Justice School (Reservist Course).

During law school, I worked as a waiter for one semester (Spring 1981) and law clerk for a group of solo practitioners in Birmingham for the remaining time except for a summer (1982) at Nelson Mullins Grier & Scarborough.

From 2008-2018, I worked as a lacrosse official and was paid for games, \$56 - \$65. The compensation was paid by the home team or, in some cases, the school district.

31. Are you now an officer or director or involved in the management of any business enterprise? Explain the nature of the business, your duties, and the term of your service.
No.
32. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14)? If so, give the dates of your employment or activity in such capacity and specify by whom you were directed or employed.
No.
33. Provide, as a **separate attachment**, a complete, current financial net worth statement that itemizes in detail:
- (a) the identity and value of all financial assets held, directly or indirectly, including, but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings; and
 - (b) the identity and amount of each liability owed, directly or indirectly, which is in excess of \$1,000, including, but not limited to, debts, mortgages, loans, and other financial obligations.

(A net worth statement form is provided with this questionnaire and you must use this format for submission of your financial statement.)

NOTE: The Commission may require written confirmation that financial obligations have been satisfied or that the parties have agreed upon a payment schedule.

A complete, current financial net worth statement was provided to the Commission.

34. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? If so, give details. Also, proof of satisfaction of any liens or defaults must be submitted with your application package.
No.
35. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? If so, please specify the item or items you received, the date of receipt, and the lobbyist or lobbyist's principal involved.

No.

36. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf in furtherance of your candidacy for the position you seek. If you have spent over \$100, have you reported your expenditures to the House and Senate Ethics Committees?

\$10.00, Fingerprints, July 6, 2020; \$7.75, USPS, July 6, 2020.

37. List the recipient and amount of all contributions made by you, a member of your immediate family, or by a business with whom you are associated, to members of the General Assembly within the past four years.

None.

38. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? If so, please specify the amount, solicitor, donor, and date of the solicitation.

No.

39. Describe any financial arrangements or business relationships you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek or currently hold. Explain how you would resolve any potential conflict of interest.

None that I am aware of. I would recuse myself from any case involving a former client.

40. Describe any interest you or a member of your immediate family has in real property:
- (a) in which there is a potential conflict of interest with your involvement in a South Carolina state or local public agency;
 - (b) in which there have been public improvements of \$200 or more that adjoins property in which there have been public improvements of \$200 or more; or
 - (c) which was sold, leased, or rented to a state or local public agency in South Carolina.

List the interest you hold and the value and location of the property. Identify as applicable the:

- (a) nature of any potential conflict of interest;
- (b) nature and value of any public improvements; and
- (c) South Carolina state or local public agency which purchased or is leasing or renting such property.

Attach a copy of any contract or agreement.

None.

41. Identify any personal property interest you or a member of your immediate family sold, leased, or rented to a South Carolina state or local public agency. Identify the property, its amount or value, and the name of the agency. Attach a copy of any contract or agreement.

None.

42. For sitting judges, if you currently hold an interest in stock or other securities or have held such an interest, list each stock you currently own or owned during the prior calendar year.

If you prefer, you may attach broker or account records containing the requested information instead of listing it here.

Not applicable.

43. For sitting judges, have you ever accepted anything of value from an attorney or litigant in a matter currently or previously before you or your court? If so, please give the details, including the name of the attorney or litigant and the thing of value you received.

Not applicable.

44. For sitting judges, have you used the services of your staff, for which you did not pay, while campaigning for this office?

Not applicable.

45. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? If so, give details but do not include traffic violations subject to a penalty of \$125 or less. You must include any and all arrests, including, but not limited to, offenses for driving under the influence or similar traffic offenses. Include all arrests that resulted in expungement, which will be redacted. If you have questions regarding whether to include an offense, please contact the Commission.

Yes. I was arrested in late July 1979 in Jacksonville, North Carolina (Onslow County) for suspected D.U.I. I had been to a going away party with friends as I was leaving active duty in the Marines to attend law school. I unequivocally denied the offense but pled guilty to reckless and careless driving.

[All answers have been received and considered by the Commission, and as noted above, any expunged matters are redacted from the record.]

46. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? If yes, explain.

No.

47. Have you ever been sued by a client? Have you ever been a named party (personally or professionally) in or had a pecuniary interest in any civil or criminal proceedings? If so, give details, including, but not limited to, dates, and resolutions.

No.

48. If you are in private practice, are you covered by malpractice insurance and, if so, how long have you carried malpractice insurance? If applicable, have you ever been covered by a tail policy? If so, please explain when you were covered by a tail policy. Also, if applicable, indicate your coverage and deductible for your current malpractice policy.

Yes, my firm has malpractice insurance. The policy is for \$5,000,000 with a deductible of \$75,000.

49. Have you ever, in South Carolina or any other jurisdiction, as a lawyer, judge, or other professional, been cautioned with or without a finding of misconduct, sanctioned, or disciplined for lawyer, judicial, or other professional misconduct or has any jurisdiction found that you committed any misconduct? If so, give the details and describe any final disposition. Include any and all confidential and public sanctions, disciplines, letters of caution, or findings of misconduct of any kind. Private or confidential dispositions will be redacted.

[Yes and no responses are redacted for all candidates unless there is a public discipline.]

50. Have you ever been investigated by the Department of Social Services? If so, give the details and the resolution. Has your name ever been enrolled on the Central Registry of Child Abuse and Neglect? If so, give the details.

No.

51. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened, or have you been offered a conditional pledge of support by any legislator pending the outcome of your screening? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? If so, give details.

No.

52. Have you requested any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Describe the campaigning you have done for this election and include a list of those individuals you have asked to campaign on your behalf and, to the best of your knowledge, those who have campaigned for you on their own initiative.

No.

53. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges until after the draft report becomes final, which occurs on the day and time specified on the Commission's published screening schedule?

Yes.

54. Since submitting your letter of intent to become a candidate, have you or has anyone acting on your behalf contacted any member of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? If so, give details.

Yes, my wife, who is Chief Legal Counsel for the House Ethics Committee, briefly disclosed the fact that I was thinking about becoming a candidate with the Chairman of the House Ethics Committee, Representative G. Murrell Smith, Jr., but she did not ask for his commitment.

55. List the names, addresses, and telephone numbers of five (5) persons from whom you are providing references. Also, provide the Commission with **original letters** of recommendation from each person listed herein, including their signature (preferably in

blue ink). **The Commission will not accept a photocopy or electronic submission of a letter of recommendation and failure to include all five (5) original letters of recommendation in your packet when you submit it will render your packet incomplete.** Please **do not** have references mail your reference letters to the Commission directly. *You must return the five (5) original letters of recommendation to the Commission with your application.*

- (a) Thomas C Salane, Turner Padgett Graham & Laney, P.A., [REDACTED]
- (b) Nekki Shutt, Burnett, Shutt & McDaniel, PA, [REDACTED]
- (c) Angus H. Macaulay, Nexsen Pruet, [REDACTED]
- (d) Donald Gist, Gist Law Firm, P.A., [REDACTED]
- (e) Rev. Dr. Brad Smith, Eastminster Presbyterian Church, [REDACTED]

56. Are you active on or a member of a social media or Internet site such as, Facebook, LinkedIn, Twitter, Instagram, etc.?

If so, please list the account names for each account and the relevant platform.

Facebook – Frank Shuler;

LinkedIn – Frank Shuler;

Instagram – JaneandFrank.

How would your use of social media or other similar types of Internet sites be affected if you were serving in a judicial capacity?

I typically do not post about anything on Facebook other than family milestones. Still it has allowed me to connect with friends from high school, college, or the Marine Corps. I use Instagram to keep up with my son, his wife, and his unit, all of which are in Hawaii. I do not believe I have posted anything other than “likes.” LinkedIn is purely based on professional activities. I do not believe my posting habits will change. As an employment lawyer, I am well aware of the pitfalls of posting.

57. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, and any professional honors, awards, or other forms of recognition received and not listed elsewhere.

Response: I am including more than the last five years because I believe it is my indicative of my service to the community outside of the legal profession:

- *Eastminster Presbyterian Church*
 - Member of Diaconate; 1996-1997; Chair, Property Committee;
 - Member of Session; 1999 – 2001; Chair, Personnel Committee; Chair, Long Term Transition Team;
 - Member of Session; 2008 – 2010; Vice-Chair Long Term Transition Team; Chair, Personnel Committee;
 - President, Susan McGahee Sunday School Class (1999 – 2005);

Cub Scout Pack 10; Den Leader (1996, 1998);
Boy Scout Troop 10; Assistant Scoutmaster (2001); Troop Committee Chairperson
(2002-2007);

- *Trinity Presbytery, Presbyterian Church U.S.A.*
Personnel Committee (member 2009 –2018; Chair 2013-2018);
- *Homeowners Association of Lake Katharine, Inc.*
Member of Board of Directors 2002-2005; President 2004 –2005;
- *South Carolina Chapter of US Lacrosse*
Official – 2008 to 2018;
- *South Carolina Lacrosse Officials Association, Inc.*
Incorporator;
Recording Secretary – 2008 to 2013;
Treasurer – 2013 to 2018;
- *West Point Parents Club*
Member 2009 – 2013, Co-President, 2011-2012;
- *U.S. Yorktown CV10-Association, Inc.*
Board Member – 2013 to present.

58. Provide any other information that may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be.

The greatest honor I have ever received as a lawyer came not from the various forms of recognition I have received, although to be honest the Distinguished Lawyer award from the Employment and Labor Law Section of the S.C. Bar is very special. Rather, it was a private note from a young lawyer whom I did know and to this day have never met in person,¹ which I received after arguing SCDSS v. Sarah W. in the South Carolina Supreme Court as follows:

I had the pleasure of watching you argue an appointed TPR in the Supreme Court today, and I had to write you. Thank you for the first-hand lesson on what being a lawyer should be about, on advocacy, and on intensity. In my admittedly short time as a member of the bar, I have encountered far too many examples of what not to do, how not to act, what not to say. Thank you for restoring my faith in our profession and reminding me why I love the law. I hope that you know how much an impressionable, young lawyer appreciates you, wants to emulate you, and learned from you today. You are a modern day Atticus.

With many thanks and admiration...

¹ I obtained the permission of the lawyer who wrote me the note to use it in this response. This was my first and only occasion to speak with her.

The lawyer who argued SCDSS v. Sarah W. is the person I will strive to be everyday as a judge: one well versed in the law but understanding that at the heart of any matter are the parties.

I was an officer in the United States Marine Corps. This provided me with the skill set of having to operate in an environment where reasoned, independent decision making is mandatory. A Judge conducts a number of proceedings, which require virtually instant reasoned judgment.

My background of having represented individuals, employees, employers, unions, benefit plans, corporations, educational institutions, government entities, not for profits, plaintiffs and defendants provides me with a unique perspective, probably unlike that of any other attorney in South Carolina. I do not have a lot of criminal experience but I can learn this area, just as I have learned so many other areas over the course of my career. If nominated by the JMSC, I will undertake several CLEs and observe trials (if cases are being tried) to better educate myself on the intricacies of criminal law and procedure.

At this point in my career, I have learned many things, but continually look forward to new legal challenges. I am not the same lawyer or person I was 37 years ago when I started. I hope and believe I have more wisdom. I sometimes tell a story regarding lawyer civility. When I was a young lawyer, I did not grant an extension to answer because my client did not want me to. It made the case very contentious – I can still you who the lawyer on the other side was even though it has been 35 years and I was practicing in Alabama at the time – for its duration. I learned something. I have never refused an extension since. More importantly, I have focused on trying to being civil and working with, not against, opposing counsel while fully representing my client. These things do not have to be mutually exclusive.

When I was a young lawyer I traveled all over the South, the Virgin Islands, and Puerto Rico representing one particular client. I could do it because I had an extremely supportive and understanding wife and no children. I am at a place in time now where I can ride the circuit and sit wherever I might be directed for whatever period of time is needed because I still have that extremely supportive and understanding wife and my only child is grown.

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

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

Signature: _____

Sworn to before me this 20th day of July, 2020.

(Notary Signature)

Margaret H. Smith
(Notary Printed Name)

Notary Public for South Carolina
My Commission Expires: _____