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?

My decision to seek this judicial office is guided primarily by the following:

a. The quality of the Bar depends in substantial part on the quality of the Bench. Historically, the Thirteenth Judicial Circuit has been blessed with excellent judges, in temperament and intellect. In turn, our judges require a high standard of practice from our Bar, in terms of both quality and professionalism. I am motivated to preserve these expectations within our Circuit, and to do my part to ensure that successive generations of lawyers are trained up, as I was, to honor our courts and colleagues with a style of practice that is consistent with the higher aspirations of the profession.

b. Relatedly, I am compelled to do my part to preserve and defend the rule of law in American life, as established by not only the Constitution of the United States, but also by the laws and Constitution of the State of South Carolina. The Republic does not function on its own; it takes nothing less than good men and women undertaking a commitment to serve—or at least to offer to serve—where they can to secure the blessings of liberty for ourselves and our future generations. After a great deal of thought, I have decided it would be improper for me to expect others to give up their private lives and practices to serve in the judicial branch without being willing, myself, to do the same.

c. The Thirteenth Judicial Circuit is my home, and has been for nearly twenty years. Because this Circuit is my home, I have a special, vested interest in seeing that the machinery of justice moves as well and as fairly as can be expected. That does not

mean I crave the authority to make decisions that affect the lives, liberty, and property interests of my fellow citizens. But I appreciate the fact that, in an ordered society, such authority must necessarily exist, and that it should be exercised humbly with a clear view of the weight that such power carries. In my estimation, a judge must be prepared to make hard decisions in furtherance of protecting his or her community. And, for better or worse, I believe I am both suited and prepared to make those decisions, specifically because of my love for my home.

d. At the risk of sounding boastful, I believe that I have certain talents, traits, and skills—some natural, some acquired over time—that lend myself to a career in the judicial branch. While I always have room for improvement, I am proud of the depth of my thought, the quality of my writing, and the ability to communicate my thoughts—even complicated ones—through my writing. I am also proud of my independence. For the better part of the past five years, I have been a sole practitioner; I have made all the decisions in my cases, lived with their consequences, and borne the entirety of their risk. Not every lawyer is comfortable with such exposure. I am. And I rate the ability to stand alone as a significant professional asset for an aspiring judge. Another professional asset of mine—which is less common among litigators—is my desire to be a stepping stone for helping folks resolve disputes, not a stumbling block. And finally, I believe I have an uncommon touch—a bedside manner—that not only makes me approachable to ordinary citizens, but still commands respect.

For all these reasons, I believe that I am called to the bench.

2. Do you plan to serve your full term if elected?

Yes, absolutely, God-willing.

3. Do you have any plans to return to private practice one day?

It is doubtful that I would return to private practice as an advocate. But, after retirement from the bench, there may be wisdom and value in continuing to practice as a professional neutral, in the capacity of a mediator or arbitrator.

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?

My personal philosophy regarding *ex parte* communications is supplied in its entirety by Canon 3(B)(7) of the Code of Judicial Conduct. In relevant part, that Section prohibits a judge from initiating, permitting, or considering *ex parte* communications, or considering other communications (including from non-lawyers and non-parties) outside of the presence of the parties, concerning a pending or impending proceeding, subject to very narrow exceptions. The circumstances under which I envision *ex parte* communications being tolerated are those supplied by the clarifying provisions of Canon 3(B)(7), which include communications for administrative purposes or emergencies, or to facilitate dispute resolution (with the consent of the parties and their counsel).

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?

The standard established by Canon 3(E) of the Code of Judicial Conduct is objective, rather than subjective. That is, the question with regard to impartiality is not whether I—as the judge—believe that I have disclosed something that creates a question as to my impartiality; it is whether the disclosure creates a reasonable question as to my impartiality from the perspective of an ordinary jurist. Consequently, if I have made a disclosure that objectively calls into question my impartiality, then I owe it to the party who may be adversely affected by the disclosure to hear how the disclosure may reasonably call my impartiality into question. That, however, would seem to be the extent of the deference required. It is then the responsibility of the potentially adversely affected party to explain how, if at all, the disclosure is reasonably likely to adversely affect my impartiality. This would require a discussion among the parties on the record. At the conclusion of the discussion, if it appears that my disclosure is reasonably likely to betray a perspective that shows a lack of impartiality, then I would be obliged to recuse myself; if, after discussion, it does not appear that the disclosure rises to the level of presenting a substantial question as to my impartiality, then I would be obliged to continue in the matter, and note my findings of fact with regard to my impartiality on the record.

It is also important to be mindful of when the offending disclosure is made. If the disclosure is made during the course of a trial by jury, in front of the jury, then, in addition to the foregoing procedure, it may be necessary to consider whether and to what extent a curative instruction to the jury would be appropriate. I would invite that discussion with the parties, and with their counsel, determine if an instruction is warranted, wanted, and prudent. As a matter of trial strategy, it is certainly possible that the allegedly aggrieved party may not wish for the curative instruction, for fear that it would call attention to the very problem they wish had never been caused.

With respect to the portion of this question asking whether I would grant a motion for recusal, with all due respect, I must respectfully decline the invitation to answer. Canon 5(A)(3)(d)(ii) of the Code of Judicial Conduct explicitly prohibits candidates for judicial office from making statements that commit, or appear to commit, the candidate with respect to cases, controversies, or issues that are likely to come before the court. This is especially prudent within the context of this specific question, as the decision to grant or deny a motion for recusal based on allegedly improvident statement is highly fact specific. The best that I can offer by way of answer is a commitment that I would entertain any motion presented by the circumstance of the case, and would endeavor to resolve that motion in a manner consistent with the laws of the State of South Carolina and the Code of Judicial Conduct.

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

I would consult Canon 3(E) of the Code of Judicial Conduct for guidance. First, I would determine whether the potential conflict in question were occasioned by my spouse or a relative within three degrees. If so, and if the family relation were: (a) a party; (b) an officer, director, or trustee of a party; or (c) a lawyer for a party, then consistent with Canon 3(E)(1), I would disclose the conflict on the record to the parties, and further, disqualify myself from participating as a judge with regard to the matter without any further discussion with the parties or the procedure permitted by Canon 3(F). I would do the same if the family relation's financial interest were more than *de minimis*, or if it were clear that the impact of the lawsuit could have a substantial impact on the relation's financial interests, or if it were clear that the relation is likely to be a material witness to the proceedings. If, however, the family relation that presents a potential conflict were not within three degrees, I would disclose the relationship on the record to the parties and invite them discuss—

outside my presence—whether to formally request my recusal, or whether to consent to my participation. Likewise, if the potentially conflicting family relation does not have a more-than-*de-minimis* financial interest in the case, or whose financial interests are not substantially likely to be adversely affected by the case, or whose materiality as a witness is uncertain—in other words, when there is a question of fact that requires the perspective of the parties—I would undertake the same process of disclosing the potential conflict to the parties on the record, and invite them to discuss—outside my presence—whether to formally request my recusal, or whether to consent to my participation. In the circumstances where my recusal is requested, and in furtherance of Canon 3(E), I would allow discussion on whether the potential conflict presents circumstances under which my impartiality might *reasonably* be questioned. At the conclusion of that discussion, I would make findings of fact on the record as to the reasonableness of the objections to my impartiality, and either recuse myself as requested, or deny the motion for my recusal and proceed with hearing the matter.

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

My standards would be those established by Canon 4(D) of the Code of Judicial Conduct. Section 4(D)(5)(c) explains that a judge may accept gifts in the vein of *ordinary* social hospitality; by implication, it explicitly prohibits accepting gifts of *extraordinary* social hospitality. By way of example, it would seem permissible to accept a bottle of wine from friends who my wife and I have invited over for dinner; it would not be permissible to accept a case of that wine.

In similar fashion, Section 4(D)(5) explains that a judge may continue to receive gifts after his or her election to the bench, provided that the gift is commensurate with a special occasion, (§ 4(D)(5)(d)), or is received from a friend or relation who, by virtue of that relationship, would otherwise require disqualification in a matter that the judge would hear, (§ 4(D)(5)(e)).

These standards might be better expressed in a separate two-part analysis:

(a) Would the gift in question have been given but for my status as a judge?
(b) Is the gift appropriate, in terms of kind and value, in light of the occasion?

If the answer to either of these questions is "no," then I would be compelled under the foregoing standards of Judicial Conduct to view the gift with extreme skepticism.

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?

My actions would be guided by Canon 3(G) of the Code of Judicial Conduct and its commentary. Depending on the nature, severity, duration, and circumstances giving rise to my "reasonable belief" of another professional's impairment, I would evaluate whether and to what extent my intervention would be warranted. As the commentary explains, it may be sufficient, depending on the circumstances, to do something as simple as talk privately with that lawyer or colleague. Or, it may be the case that a confidential referral to Lawyers Helping Lawyers is warranted. In extreme circumstances, it may be necessary to report the lawyer or colleague to the appropriate disciplinary authority, as contemplated by § 3(D)(1)&(2). Ultimately, the course of action I may choose to undertake would be guided by the policy goal of § 3(G), which is to ensure that the lawyer or colleague I believe to be suffering from impairment gets the help they need, and to mitigate harm to the justice system.

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, not that I'm aware of.

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

Yes, on many occasions. Through my service on the boards of numerous non-profit organizations, as well as on behalf of non-profit organizations through which my friends and family serve or have served, I have personally and substantially engaged in fund-raising activities to support the missions of those organizations. However, I have never engaged in any lobbying activities. All of my fund-raising activities have been directed at the contacts within my personal social network.

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?

It would be my ambition to dispose of most administrative, non-dispositive motions, dispositive motions that do not constitute a final decision on the merits (in part or in whole), or denials of injunctive relief through the use of the Form 4. For dispositive motions that do constitute a final decision on the merits, grants of injunctive relief, judgments, and other non-dispositive motions that are likely to form the basis of an appeal, it would be my strong preference to prepare formal orders in chambers. From time to time, and depending on the counsel involved, it may be appropriate to request a prevailing party to prepare an order for my approval. However, it has been my experience that a party who prepares an order for the court tends to load the proposed order with various and sundry "findings of fact" and "conclusions of law" that the court never found or concluded. Consequently, it is with hesitation that I would request a party to prepare an order for my signature.

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

There are two pieces to this puzzle. First, I would hire a judicial assistant who has significant experience in handling litigation; ideally, a person I have worked with in the past and know that I can trust and work well with. Second, I would work toward building systems and processes with my assistant to ensure that motions and matters are disposed of as swiftly as practicable. I expect that my chambers would make extensive use of cross-referenced calendars and built-in redundancies for deadlines, to minimize the risk that open action-items would slip through the cracks. I would also likely turn my email account over to my assistant, so that it could be managed by that person, and actively dissuade lawyers with cases before me from emailing me for any non-emergent reason, so that I could focus more deliberately on judging. With effective systems and processes, my chambers would hopefully be better able to incorporate law clerks more readily into our established routine, and thereby increase our productivity.

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

Because "judicial activism" is a loaded phrase, I would like to take this

opportunity to explain what I perceive it is, and maybe more importantly, what it is not. I understand "judicial activism" to describe judges who consciously disregard applicable law to achieve some personal policy interest, or who craft law from thin air under the guise of "public policy." I have known many judges, in several states, and have worked as a law clerk in several courthouses. I have never seen "judicial activism;" instead, I have seen men and women who have dedicated their lives to the proper administration of justice, and who endeavor daily to do right, by both the facts and the law, as they bear the burden of the awesome power they wield. I understand my evidence is purely anecdotal; I appreciate the fact that there are some judges in some jurisdictions who have not fully relinquished their prior identities as advocates. But I have not bought into the fear of widespread "judicial activism" specifically because I have not seen it.

Instead, what I have seen—and far more commonly—is the malignment of those humble public servants by folks who do not like the decisions reached by judges, even though those decisions may be compelled by the laws and facts presented, specifically because the decision does not comport with the contrarians' view of how the world *ought* to be. Consequently, the slander of "judicial activist" is applied regularly to judges who follow the law, even to an unpopular conclusion, because that is exactly what their mandate requires. It is a weird twist, in these circumstances, that judges are criticized—sometimes ruthlessly—for failing to invent the law as they go.

With this background, my philosophy on "judicial activism" is that the role of judges—particularly circuit judges—is to apply the laws of the State of South Carolina as given by the General Assembly, and as interpreted by the Supreme Court. To the extent that public policy must inform a decision to be made by a circuit judge, it is for the General Assembly primarily—but also the justices of the South Carolina Supreme Court and the United States Supreme Court—to establish. The circuit judge must apply that policy, where it exists; the circuit judge must not craft that policy, where it does not. This will not insulate a circuit judge from accusations of activism, but it will go a long way toward ensuring that such accusations are without merit.

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?

To a large extent, I would continue to do the same types of activities that I have done in the past. That is, I would intend to continue

extensive participation in our local chapter of the American Inns of Court, and would continue to welcome speaking opportunities regarding the administration of justice and the importance of the rule of law to American society. I would also like to develop opportunities with my alma mater—Furman University—to lecture on various legal topics, be they constitutional law or otherwise. I would also welcome opportunities to speak about the law and the legal profession to students of any age.

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?

I have no doubt that my election as a judge—if I am elected—would change a number of my relationships. While I expect that the quality of pressure I am likely to experience from being a judge would be different than the type I experience as an advocate, I am doubtful that the quantity would be much different. Accordingly, I do not perceive much risk that my relationships with my wife or family would change.

I do, however, expect that the relationships with my friends would change. I have many friends who are lawyers. And I fully expect that, if I am elected to the bench, I will be required to let those relationships slip into the past. I am reminded of an off-hand comment made by a federal judge who hired me as a clerk out of law school. In reflecting on his career, he remarked that being a judge is "lonely business." I heard that same sentiment echoed when I moved back to South Carolina and temporarily clerked for another federal judge. I have heard other judges say the same since.

I am prepared—as much as I can be—to accept the burdens of the relative isolation that comes with being a judge. It is an occupational hazard that cannot be avoided, particularly when maintaining impartiality is essential to the proper administration of justice. To cope with this necessary change, I expect I'll make new friends: friends with other judges; friends in the clerk's office; friends with courthouse staff. Perhaps most importantly, I will have the opportunity to build a new community—a family of law clerks.

I am certain that the transition from old friends to new will not be without its challenges. But I am hopeful about the prospects for this next stage of my life and career.

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.

Before addressing the particular scenarios laid out below, I would like to take this opportunity to explain my philosophy on sentencing in general. My thoughts are generally organized around the following six aspects:

(1) Purpose of Sentencing. Sentencing aims to punish for wrongful conduct, to deter the commission of wrongful conduct in the future (either by the defendant or others in the community), and ideally, provide an opportunity for the defendant's rehabilitation to become a productive member of society.

(2) Guidestones. A sentence for criminal conduct should be sufficient, but not greater than necessary, to accomplish the aims of punishment, deterrence, and rehabilitation.

(3) Tailored to the Circumstances. Criminal sentencing is not one-size-fits-all. An appropriate sentence should take into account both aggravating and mitigating factors that are unique to the individual and the crime.

(4) Consistency. A sentence for criminal conduct as to a particular defendant should be commensurate with similar sentences for similar conduct of similar severity.

(5) Acceptance of Responsibility. A sentence for criminal conduct should reflect a defendant's genuine acceptance of responsibility and/or remorse.

(6) Deference. The sentencing judge should give significant weight to the sentencing recommendations provided by both the solicitor and defendant's counsel, including opportunities for alternative forms of punishment and/or diversionary measures that may be available.

With these aspects in mind, I will address the following scenarios.

a. Repeat offenders: To the extent this question is asking about my philosophy for sentencing "repeat offenders," as that term is defined in S.C. Code § 16-1-120, then I would endeavor to impose a sentence for the subsequent conviction (which triggered the imposition of a sentence for a "repeat offender") in a manner consistent with the six guiding principles outlined above, appreciating that the "repeat offender" status will, as required by the General Assembly, require an additional, consecutive period of incarceration. To the extent this question is asking about "repeat offenders" in a general sense, then I would nonetheless endeavor to impose a sentence commensurate with the six guiding principles.

b. Juveniles (that have been waived to the Circuit Court): Consistent with the six sentencing principles outlined above, I would endeavor to impose a sentence that was sufficient, but not greater than necessary, to provide an opportunity for punishment, deterrence, and rehabilitation, with particular attention to whether and to what extent the South Carolina Department of Corrections can provide specific resources for the rehabilitation of the defendant, given his or her youth.

c. White collar criminals: Consistent with the six sentencing principles outlined above, I would endeavor to impose a sentence that was sufficient, but not greater than necessary, to provide an opportunity for punishment, deterrence, and rehabilitation, with particular attention to whether and to what extent the defendant has accepted responsibility for his or her conduct, and to what extent the defendant is reasonably capable of making restitution.

d. Defendants with a socially and/or economically disadvantaged background: Consistent with the six sentencing principles outlined above, I would endeavor to impose a sentence that was sufficient, but not greater than necessary, to provide an opportunity for punishment, deterrence, and rehabilitation, with particular attention to whether and to what extent alternative disciplinary measures and/or diversionary programs may be available and useful.

e. Elderly defendants or those with some infirmity: Given the unique circumstances of the case, I would order that the defendant be referred to a licensed professional for evaluation, to determine the defendant's capacity, the integrity of their mental faculties, whether a guardianship is appropriate, and ultimately, whether the defendant is competent to stand trial. In the event that the defendant is found competent, then, consistent with the six sentencing principles outlined above, I would endeavor to impose a sentence that was sufficient, but not greater than necessary, to provide an opportunity for punishment, deterrence, and rehabilitation.

To the extent this question calls for more specific detail, with all due respect, I must respectfully decline the invitation to answer. Canon 5(A)(3)(d)(ii) of the Code of Judicial Conduct explicitly prohibits candidates for judicial office from making statements that commit, or appear to commit, the candidate with respect to cases, controversies,

or issues that are likely to come before the court. This is especially prudent within the context of this specific question, as the issues involving criminal sentencing are properly determined by the unique circumstances of each case. The best that I can offer by way of answer is a commitment that I would endeavor to sentence each and every defendant in a manner consistent with the six principles outlined above, and all in a manner consistent with the laws of the State of South Carolina and the Code of Judicial Conduct

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?

My evaluation of this potential conflict would necessarily be guided by Canon 3(E)(1)(d) of the Code of Judicial Conduct. If I, or a member of my family within three degrees, has a *de minimis* financial interest in a party, then I should disclose that potential conflict on the record to all parties, so that the parties may consider the question of my disqualification. At that point, I would invite the parties to discuss—outside my presence, if requested—whether the potential conflict presents an objectively reasonable question about my capacity to be impartial in a decision on the case. If a party perceives that my impartiality might reasonably be questioned, then I would hear from the parties on the facts and circumstances that underlie their concerns. If, based on the parties' presentations, I determine that an ordinary jurist would not have cause to question my impartiality, then I would deny any motion for recusal, and state my reasons for denial, all on the record. If, alternatively, I determine that an ordinary jurist would have reasonable cause to question my impartiality, I would indicate my perception that recusal is appropriate to the parties, and inquire—consistent with § 3(F)—whether the parties would consent to my participation as judge in the matter in spite of the potential conflict. If the parties will not consent, then I would recuse myself, to ensure that all parties are confident that justice has been administered impartially in their case.

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

Yes.

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

Each of the most effective judges I have ever worked for or appeared before has had the same quality when presiding: they quietly command their courtroom. They do not lord their status over the parties, their counsel, the courtroom staff, or members of the public. They do not try to be the center of attention, let alone the ringmaster in some circus. They are comfortable letting lawyers try their cases, or argue their motions, without injecting their own style preferences. They are engaged in the moment, each moment by moment, and are appropriately somber, inquisitive, or humorous, as the circumstances may dictate. Generally, at the conclusion of a hearing or a trial, they will endeavor to shake hands with everyone, and thank them for their diligence and preparation. These judges transform their courtrooms from arenas of combat to spaces in which civility can flourish.

This same class of judges acts the same way off the bench.

Judges, upon their election, must necessarily give up their liberty to act however they want whenever they want, particularly since they are in the public eye, representing the judicial system, wherever they go. I have known judges who gratefully gave up that small slice of their freedom so they could serve a greater cause, and I aspire to be like them.

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?

No. Anger is a wasted emotion. It is generally the result of unmet expectations or a lack of control. In a courtroom, a judge should be burdened by neither.

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, 2020.

Tami Clemment
(Signature)

Tammi Clemment
(Print Name)
Notary Public for South Carolina
My Commission Expires: 11-12-2024