



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

Administrative Law Court
(New Candidate)

Full Name: The Honorable Crystal Rookard

Business Address: Lander University, 320 Stanley Avenue, Greenwood, SC
29649

Business Telephone: (864) 388-8059

1. Do you plan to serve your full term if elected? Yes.
2. Do you have any plans to return to private practice one day? No.
3. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice? Yes.
4. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Ex parte communications are not allowed unless there is an exception based on SC Judicial Canon 3 Section (7).

My philosophy regarding *ex parte* communications is consistent with the SC Judicial Canon 3 Section (7) that states:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law if applicable or a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Noted in the Commentary of Judicial Canon 3(7):

Certain ex parte communication is approved by Section 3B (7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B (7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

Examples when an ex parte communication may be expressly authorized by law include the issuance of a temporary restraining order under certain limited circumstances [Rule 65(b), SCRPC], the issuance of a writ of supersede as under exigent circumstances [Rule 225(d)(6), SCACR], the determination of fees and expenses for indigent capital defendants [S.C. Code Ann. § 16-3-26 (Supp. 1995)], the issuance of temporary orders related to child custody and support where conditions warrant [S.C. Code Ann. § 63-17-390 (Supp. 2008)], and the issuance of a seizure order regarding delinquent insurers [S.C. Code Ann. § 38- 27-220(Supp. 1995)].

5. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion? I would listen to the party's argument. Yes, I would grant the motion.

Also, I would refer to and follow Judicial Canon 3 (E) (1) (a) (b) and (F):

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Also, as a state government attorney I would refer to the Judicial Canon 3 (E) Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

I would refer to and follow Judicial Canon 3 (E) (1) (b) and (F) that states the following:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

6. If elected, what standards would you set for yourself regarding the acceptance of gifts or social hospitality?

I would only accept gifts that are allowed under Judicial Canon 2 and 4.

Regarding the acceptance of gifts or social hospitality, I would refer to Judicial Canon 2 and Canon 4 (D) (5) and the Commentary:

Judicial Canon 2 states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Judicial Canon 4(D) 5 states:

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:

Commentary:

Section 4D (5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5. Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h). A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A (1) and 2B.

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds

\$150.00, the judge reports it in the same manner as the judge reports compensation in Section 4H; or

(i) a judicial portrait or memorial which complies with the requirements of Rule 3.5(d) of the Rules of Professional Conduct contained in Rule 407, SCACR.

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

7. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

I would refer to and follow Judicial Canon 3(D):

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

8. Are you affiliated with any political parties, boards, or commissions that, if you are elected, would need to be re-evaluated? No.
9. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? No.

10. How would you handle the drafting of orders? After careful and thoughtful review, it would be my responsibility to draft and prepare orders in an efficient and timely manner.
11. What method would you use to ensure that you and your staff meet deadlines?

I would set deadlines, organize the caseload, and prioritize the cases and follow guidance provided by Judicial Canon 3 (8):

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary:

In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

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

I believe it is the role of judges to apply the laws passed by the legislature to the matters before the court. Public policy is set by the legislature. Judges should avoid making decisions that are heavily influenced by personal or political influences.

13. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities would you plan to undertake to further this improvement of the legal system? I would continue to adjunct teach at local colleges if my schedule permits. I would continue to volunteer in local schools however, I would keep in mind and comply with the following guidance:

Canon 4

A judge shall so conduct the Judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability or age. See Section 2C and accompanying Commentary

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

14. Do you feel that the pressure of serving as a judge will strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you plan to address this?

No. The key is balance. I would maintain my personal relationships. Healthy and positive relationships with my family and friends will help me be a better judge.

15. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality? No.

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

No. I would consult the applicable Judicial Canon and disclose the financial interest. The canon states that disqualification required if more than de minimum interest.

Judicial Canon 3 (E) (1) (c) states:
E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

17. 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

18. Have you met the mandatory minimum hours requirement for continuing legal education courses? Yes

19. What percentage of your legal experience has dealt with cases that appear before the Administrative Law Court? Please describe to the Commission your experience in these areas. 20 years as state government attorney

I believe my extensive experience in state government and as an Associate (Substitute) Municipal Court Judge have uniquely prepared me to be an

Administrative Law Judge. As a South Carolina government attorney and former Human Resources Director in state government, I have handled a variety of legal issues such as: review of policy and procedures, business transactions, complex employment matters, privacy and records management, student conduct, transactional matters involving copyright and technology transfer, contributor to strategic administrative and management initiatives, drafting, reviewing, and negotiating complex agreements for the procurement of goods and services, drafted, reviewed and negotiated agreements with local hospitals and healthcare facilities, regulatory compliance, developed and presented training and development programs to employees on various areas of the law affecting the organization. I have conducted numerous investigations regarding inmate complaints, employee, and student issues. I possess extensive experience and knowledge of state human resources' regulations and laws. Also, I have working knowledge of the state employee grievance process.

In addition, I have handled auditing issues, contract review, employee grievances, including arbitrations, mediations and hearings before the State Employee Grievance Committee, finance/procurement, law enforcement issues, easements/real estate issues, ethics/compliance, freedom of information, governance, review/draft legislation, policies and procedures, processes, and publications as needed, higher education law, human resource management: benefits, class/compensation, disability, recruitment, leave, payroll, retirement, temporary employment, workers compensation, and provided legal advice to supervisors, board members and executive level management.

From 2000 – 2005, I was Deputy General Counsel for the SC Department of Corrections. I defended the Department against inmate litigation in circuit court and inmate appeals to the Administrative Law Court. (Al-Shabazz cases) I drafted and filed numerous briefs, prepared documents to be submitted into the record and interacted with staff members of the Administrative Law Court. I handled numerous cases involving prison disciplinary appeals, sentence calculations, custody, and liberty interests.

I believe that my experiences as an associate (substitute) municipal court judge, my human resources and legal background in state government have prepared me to preside over matters that come before an Administrative Law Judge.

20. What do you feel is the appropriate demeanor for a judge and when do these rules apply? A judge should be fair, impartial, unbiased, avoid behavior that could appear to be prejudicial, patient, dignified, courteous, honest, trustworthy, and avoid the appearance of impropriety. The rules always apply.

Judicial Canon 3 (3) and (4) states:

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

21. Do you feel that it is ever appropriate to be angry with a member of the public who would appear before you? Is anger ever appropriate in dealing with attorneys or a pro se litigant? No. A judge shall be patient, dignified and courteous.

Note Judicial Canon 3 (3) and (4) states:

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

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

(Candidate Signature)

Sworn to before me this ____ day of _____, 2020.

(Notary Signature)

(Print name)

Notary Public for South Carolina

My Commission Expires: _____